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W.P.No.10623 of 2022 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.Nos.10623, 10628, 10762, 10789,
10790, 10791, 10794, 10798 and 10800 of 2022
and

W.M.P.Nos.10277, 10278, 10396, 10429,
10430, 10431, 10433, 10436 and 10437 of 2022

W.P.No.10623 of 2022:

M/s.Hotel Southern Comforts
Represented by Mohammed Rafique,
No.5 Station Road,
Meenambakkam,
Chennai – 600 027.

... Petitioner

Vs

State Tax Officer,
Survey Cell-II, Intelligence-II,
Chennai – 600 006.

... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records and quashing the impugned order bearing Ref.No.33AAHFH7504F1ZO/2018-19 dated 10.01.2020 passed by the respondent dated 10.01.2020 which is illegal and in violation of principles of natural justice and quash the same.



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In all WPs

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

COMMON ORDER

In these writ petitions, the challenge was the impugned orders of assessment dated 10.01.2020 made under Section 62(1) of the GST Act.

2. Assailing these orders, Mr.G.Natarajan, learned counsel appearing for the petitioner would contend that, the period relates to December 2018 to August 2019, for which, the return could not be filed for variety of reasons attached with the dealer petitioner and ultimately these orders under Section 62(1) was passed.

3. If an order under Section 62(1) was passed, under sub-section (2), there is an option to the dealer to file return within 30 days and once a return is filed within 30 days, the assessment order passed under sub-section (1) would deem to have been withdrawn and thereafter, the return would be processed and accordingly, the Revenue would proceed.



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appeals under Section 107 of the Act in time. Even the condonable period of delay was also over as early as in the year 2020 itself, hence absolutely there was no chance for the petitioner to approach the Appellate Authority, that is the reason why the petitioner has approached this Court by filing these writ petitions challenging the impugned orders by invoking the extraordinary jurisdiction of this Court under Article 226.

7. However, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent would contend that, insofar as these cases are concerned, if at all the petitioner wants to prefer appeal, they can very well knock the door of the Appellate Authority filing a condone delay petition with plausible reason including the Covid-19 situation.

8. Even for entertaining such an appeal, Section 107(6) shall be complied with by the petitioner by depositing the admitted tax as well as payment of 10% of the remaining tax as per the impugned assessment orders.

9. When this alternative appeal remedy is available, by complying with the provisions of Section 107, if the petitioner chooses to file an



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appeal, it is the matter between the petitioner and the Appellate Authority and if ultimately the appeal is entertained and notice is issued, the Revenue will be in a position to defend their case, therefore, the extraordinary jurisdiction of this Court under Article 226 cannot be invoked challenging the impugned orders, he contended.

10. However, Mr.G.Natarajan, learned counsel appearing for the petitioner dealer would point out that, in the meanwhile, pursuant to the impugned orders, the Bank accounts of the petitioner have been attached. Therefore, the entire business of the petitioner has been crippled, hence, by way of an interim relief, the Bank attachment order made by the respondent Revenue can be directed to be lifted and that is the only solution that can be given to the petitioner at this juncture, so that the petitioner can move further to comply with the provisions of Section 107 even to go before the Appellate Authority to file an appeal as the pre-deposit condition as well as other condition imposed therein under Section 107 are to be necessarily complied with, without which, the appeal cannot be entertained, he contended.

11. I have considered the said rival submissions made by the



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learned counsel appearing for the parties and have perused the materials placed before this Court.

12. Insofar as the provision made under Section 62 of the Act, under which, as has been rightly pointed out by the learned counsel appearing for the petitioner, since he has not chosen to file the return within 30 days from the date of the orders which are impugned herein, the chance of getting a deemed withdrawal of the assessment orders are lost and therefore, the chance of the petitioner to get remedy under Section 62(2) was closed and therefore, the further appeal alone is the only remedy for the petitioner.

13. When there is an appeal remedy available under Section 107, it is the settled proposition that, writ petition cannot be filed by invoking the extraordinary jurisdiction of this Court as that would be possible in three circumstances viz., violation of principles of natural justice, violation of statutory provisions or for want of jurisdiction of the authority who passes the impugned order.

14. Here none of such situations are available for the petitioner to



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invoke the extraordinary jurisdiction of this Court, hence, on that ground these writ petitions are liable to be rejected.

15. However, under Section 107 of the Act, the petitioner can very well file an appeal before the Appellate Authority, where the petitioner can also file a condone delay petition stating the Covid-19 situation.

16. The reason being that, the impugned orders invariably in all these cases were dated 10.01.2020, the three months limitation and one month condonable period to file an appeal ends only some time in April 2020, by that time the Covid-19 pandemic first wave situation started and there was a complete lock down of the entire Country from the third week of March 2020 and taking that grim situation, the Hon'ble Supreme Court also in the *suo motu* writ petition has extended the limitation period upto May 2022. Therefore, citing these reasons, the petitioner can very well file an appeal against these impugned orders even now, for which, this Court feels that, two weeks specific time can be given by this Court, within which, if the petitioner is able to file an appeal, of course by complying the mandatory requirement of payment under sub-section (6) of Section



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107, where, based on such compliance, it is open to the petitioner to seek for an interim order, that can be considered under sub-section (7), where the legislature itself has made it clear that, once the sub-section (6) is complied with, the recovery proceedings for the balance amount shall be deemed to be stayed. Therefore, the recovery proceedings for the balance amount, for which, if at all the Bank accounts of the petitioner are attached, the same can also be directed to be lifted by way of interim order, hence that can very well be considered objectively by the Appellate Authority if such an application is made by the petitioner.

17. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That the impugned orders cannot be successfully challenged before this Court on the ground of non-exhausting the alternative, efficacious appellate remedy which is available to the petitioner under Section 107 of the GST Act, hence, these writ petitions are rejected with the liberty to the petitioner by relegating the petitioner to go before the Appellate Authority to file appeals.

(ii) If such appeals are filed within two weeks from the



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date of receipt of a copy of this order by complying the requirement under sub-section (6) of Section 107, the appeals shall be entertained by the Appellate Authority in view of the Covid-19 pandemic situation, for which, the rescue has already come from the Hon'ble Supreme Court in the *suo motu* writ petition, referred to above.

(iii) Once such compliance is made under sub-section (6) of Section 107, it is open to the petitioner to seek remedy under sub-section (7) of Section 107, which includes a direction to be issued by the Appellate Authority to the Revenue as well as the Bank authorities to lift the attachment made against the Bank accounts of the petitioner and if such a request is made, the same shall be objectively considered and orders should be passed enabling the petitioner to operate its Bank accounts.

(iv) These orders passed giving all these liberty to the petitioner to go before the Appellate Authority with the aforesaid observations have been made only because of the pandemic situation, otherwise normally this kind of liberty would not be given by this Court after lapse of two years



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from the date where the three months limitation period as

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well as one month condonable period was over.

18. With these observations and directions, all these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Speaking Order : Yes / No

Sgl

To
State Tax Officer,
Survey Cell-II, Intelligence-II,
Chennai – 600 006.



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R. SURESH KUMAR, J.

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