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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

WRIT APPEAL NO.1441 OF 2021
AND
C.M.P.NO.8962 OF 2021

1. Senior Intelligence Officer,
The Directorate General of Goods
and Services Tax Intelligence,
Trichy Regional Unit,
No.47-47A, Heber Road,
Beema Nagar, (New address)
Trichy - 620 001.
 2. The Directorate General of Goods
and Services Tax Intelligence,
Trichy Regional Unit,
No.47-47A, Heber Road,
Beema Nagar, (New address)
Trichy - 620 001.
 3. The Directorate General - South Zone,
The Directorate General of Goods
and Services Tax Intelligence,
C-3, C-Wing, II Floor,
Rajaji Bhawan, Besant Nagar,
Chennai - 600 090.
 4. The Directorate General of Goods
and Services Tax Intelligence (HQ),
West Block-8, Wing No.6,
2nd Floor, R.K.Puram,
New Delhi - 110 066.
- ... Appellants/Respondents

Versus

1. M/s.Shri Nandhi Dhall Mills
India Private Limited,
Rep. by its Managing Director
Mr.S.A.Kumar,
270, Narsimman Road,
Salem - 636 002.



2. The State GST Authority/The Assistant
Commissioner (ST) (FAL),
Annathanapatty Circle,
Salem.

(R2 impleaded vide Court order dated
02.09.2021 made in C.M.P.No.14363 of
2021 in W.A.No.1441 of 2021)

.. Respondents

PRAYER:-

Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 07.04.2021 passed in W.P.No.5192 of 2020 on the
file of this Court.

PRAYER IN W.P.NO.5192 OF 2020:-

Writ Petition filed under Article 226 of the Constitution of
India praying to Writ of Mandamus, direction and restraining the
1st and 2nd Respondent from demanding any amount from the
Petitioner except by following due process of law and further
direct to refund of Rs.2 crores along with statutory interest
under CGST Act, 2017 and also return the documents seized at the
time of search on 22.10.2019.

For Appellants : Mr.Sankara Narayanan,
Additional Solicitor General
Assisted by
Mr.V.Sundareswaran
Senior Standing Counsel

For Respondent-1 : Mr.Hari Radhakrishnan

For Respondent-2 : Mr.Prasanth Kiran
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This intra-court appeal is filed by the appellants,
aggrieved by the order dated 07.04.2021 passed in W.P.No.5192 of
2020. By the said order dated 07.4.2021, the learned Judge
directed the appellants to refund the sum of Rs.2 crores,
collected from the writ petitioner/first respondent herein
towards Goods and Service Tax due, within a period of four weeks.



2. The first respondent in this appeal has filed the above said Writ Petition No. 5192 of 2020 praying to issue a Writ of Mandamus, restraining the respondents 1 and 2 in the writ petition/appellants 1 and 2 from demanding any amount from them except by following due process of law and further direct to refund the sum of Rs.2 crores along with statutory interest under CGST Act, 2017 and also return the documents seized at the time of search on 22.10.2019.

3. The writ petitioner/first respondent is an assessee under the provisions of the Goods and Service Tax Act, 2017 (in short, the Act) and they are a private limited company engaged in supply of pulses, dhal and flour. According to the writ petitioner/first respondent, they are prompt in filing the monthly and annual returns, as required under the Act. While so, on 22.10.2019, a search was conducted in the business premises purportedly on receipt of information that the writ petitioner/first respondent indulged in evasion of tax. During the course of such search, certain documents have been seized. The officers attached to the office of the first and second appellants have also recorded the statement of Thiru.S.A.Kumar, Managing Director of the firm, who said to have voluntarily given a statement, admitting the tax liability payable by the firm. The aforesaid S.A.Kumar also voluntarily admitted to pay the entire tax due in instalments. On the date of search, a sum of Rs.1 crore was paid and the Managing Director of the firm also assured to clear the remaining amount towards tax due, as per the schedule of instalment given at the time of inspection. A week after the search, the writ petitioner/first respondent firm also paid another sum of Rs.1 crore, as per the schedule of instalment. However, the writ petitioner/first respondent submitted an application dated 27.11.2019 for refund of the sum of Rs.2 crores on the ground that such amount were paid under coercion, threat and duress and that the inspection team have subjected the employees of the writ petitioner/first respondent to sheer harassment to collect the tax due. After filing such an application for refund of the sum of Rs.2 crores, the writ petitioner/first respondent has filed the writ petition before this Court.

4. The writ petition was vehemently opposed by the respondents/appellants herein by contending inter alia that the Managing Director of the first respondent/writ petitioner had given a statement voluntarily, free from any coercion. On the date of search, a sum of Rs.1 crore was paid towards admitted tax liability with an assurance to pay the balance tax amount as per the schedule given to the enforcement officials. Even a further sum of Rs.1 crore was also paid by the first respondent/writ petitioner, however, the writ petitioner/first respondent retracted from the statement and alleged that the



amount was recovered by exerting pressure. According to the respondents/appellants, such a statement is far from truth and the inspecting team did not harass the employees of the writ petitioner firm in any manner. The fact remains that huge sums of tax remains unpaid by the writ petitioner's firm purportedly on the ground that none of their products are sold under registered brand names and therefore, they are not liable to pay tax for supply of goods under an un-registered brand name and usage of logo. In any event, the amount was paid by the writ petitioner/first respondent voluntarily and the question of exerting pressure to collect the tax amount does not arise. Therefore, the respondents have prayed for dismissal of the writ petition.

5. The learned Judge, upon appraisal of the facts pleaded by both sides, placed reliance on the interim order passed by the Division Bench of the Gujarat High Court in S.C.A. No. 3196 of 2021 in the case of M/s. Bhumi Associate vs. Union of India, through the Secretary. In that decision, the Division Bench has formulated certain guidelines for recovery of the tax due. It was specifically directed that no recovery in any mode, by cheque, cash, epayment or adjustment of Input Tax Credit should be made at the time of search/ inspection even if the assessee voluntarily comes forward to make payment. The relevant portion of the order passed by the Division Bench reads as follows:-

"The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:

(1) No recovery in any mode by cheque, cash, epayment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC03, the assessee should be asked/advised to file such Form DRC03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

(3) Facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.



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(4) If complaint/grievance is filed by assessee and officer is found to have acted in defiance of the aforesaid directions, then strict disciplinary action should be initiated against the concerned officer.?"

6. By applying the aforesaid decision to the facts pleaded by the writ petitioner/first respondent, the learned Judge allowed the writ petition and directed the appellants to refund the sum of Rs.2 crore to the writ petitioner.

7. Assailing the order passed by the learned Judge, the learned Additional Solicitor General appearing for the appellants submitted that the transaction involved in this case is required to be taxed under the provisions of the Act. But on the other hand, such transaction has been suppressed by the writ petitioner/first respondent and only upon investigation, it was unearthed. The liability of the writ petitioner/first respondent crystallised by the writ petitioner themselves by virtue of the payments made in instalments, while so, the direction issued by the learned Judge is not warranted.

8. Heard the learned counsel for the appellants as well as the learned counsel for the first respondent/writ petitioner and the learned Government Advocate for the second respondent.

9. After advancing some arguments, the learned Additional Solicitor General appearing for the appellants as well as the learned counsel for the writ petitioner/first respondent ultimately submitted that an enquiry has to be conducted and the actual tax liability of the writ petitioner/first respondent, if any, has to be determined in the light of the available materials. Therefore, in unison, it was prayed that the appellants may be directed to conduct an enquiry, determine the tax liability of the writ petitioner/first respondent and thereafter to proceed in accordance with law.

10. In the light of the above submission of the counsel on either side, to give a quietus to the dispute, this Court is inclined to dispose of this writ appeal with the following directions:-

(i) The appellants are directed to issue a show cause notice calling upon the writ petitioner/first respondent to produce documents to prove that they are not liable to pay any tax under the Act or they have paid the entire tax due to the department, within a period of four weeks from the date of receipt of a copy of this order



(ii) On receipt of such notice, the writ petitioner/first respondent shall submit their objections, if any, along with documentary evidence, within a period of two weeks thereafter.

(iii) Thereafter, the appellants are directed to afford an opportunity of personal hearing to the writ petitioner/first respondent by specifying a date in advance.

(iv) The writ petitioner/first respondent shall appear before the appellants on the date fixed for personal hearing and make their submissions

(v) After hearing the writ petitioner/first respondent or their authorised representative on the date fixed for personal hearing, the appellants are directed to pass appropriate orders on merits determining the amount of tax, if any, payable by the writ petitioner/first respondent inter alia their entitlement to get refund of the sum of Rs.2 crores already paid by them. Such an order shall be passed by the appellants, within a period of four weeks thereafter.

11. With the above directions, the order dated 07.04.2021 passed by the learned Judge in W.P.No.5192 of 2020 is modified and the Writ Appeal stands disposed of. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

kas/rsh

To

1. The State GST Authority/The Assistant
Commissioner (ST) (FAL),
Annathanapatty Circle,
Salem.
2. Senior Intelligence Officer,
The Directorate General of Goods
and Services Tax Intelligence,
Trichy Regional Unit,
No.47-47A, Heber Road,
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2nd Floor, R.K.Puram,
New Delhi - 110 066.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.11772

W.A.NO.1441 OF 2021

KV(CO)
PBS/17/03/2022