IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.220 of 2023
and
C.M.P. No. 2247 of 2023

M/s. Om Sakthi Construction
Rep. by its Partner V.Kannan
No.1, Udayar Street
Thollamur Village, Earaiyur Post
Vanur Taluk
Villupuram District 604304 .. Appellant

Versus

The Assistant Commissioner
Circle-V, Audit-II Commissionerate
Office of the Commissionerate of GST and Central Excise
No.692, 6th Floor, MHU Complex, Anna Salai
Nandanam, Chennai 600 035 .. Respondent

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 06.01.2023 passed in W.P.No.85 of 2023.

For Appellant : Mr. A. Thiyagarajan
Senior Advocate
for Mr. D. Senthilkumar

For Respondent : Mr. V. Sundareswaran
Senior Panel Counsel

JUDGMENT

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

The appellant has come forward with this intra-court appeal aggrieved by the order dated 06.01.2023 passed by the learned Judge dismissing the Writ Petition No. 85 of 2023 filed by him.

2. The appellant has filed the aforesaid Writ Petition No. 85 of 2023 praying to issue a Writ of Certiorarified Mandamus to quash the notice dated 30.08.2022 and also the consequential notices dated 23.11.2022 and 22.12.2022 issued by the respondent.

3. (i) In the affidavit filed in support of the writ petition, it was stated that the appellant is a Class-I contractor registered with the Highways Department in the State of Tamil Nadu. They were engaged by the Public Works Department in several road contract works for the past several years. According to the appellant, they are carrying only government projects to lay road and maintenance works etc. While so, the respondent issued a notice dated 30.08.2022 calling upon the appellant to produce the books of account for the financial year commencing from July 2017 to March 2020 purportedly to conduct an audit as required under Section 65 of the Central Goods and

Services Tax Act (in short 'CGST' Act), 2017. On receipt of the notice dated 30.08.2022, the appellant sent a detailed reply dated 10.09.2022 stating that the office of the Directorate General of GST Intelligence (DGGI) Chennai Zonal Unit has booked a case against them and an investigation is going on for more than two years. For the purpose of investigation, all the books of accounts and documents corresponding to the very same period from July 2017 to March 2021 have been produced to the officers attached to the Directorate General of GST Intelligence, Chennai Zonal Unit. Further, during the course of investigation, the GST liability of the appellant has been worked out and they have also paid a sum of Rs.6,16,81,840/-. Therefore, by reply dated 10.09.2022, it was submitted that they are not in a position to coordinate with two authorities i.e., Assistant Commissioner/Circle-V, Audit-II, Commissionerate, Office of the Commissioner of GST and Central Excise/ respondent herein as well as the Directorate General of GST Intelligence on the same issue at the same time. Accordingly, the appellant sought to exempt them from producing the documents called for in the communication dated 30.08.2022.

(ii) Notwithstanding the reply of the appellant, the respondent issued a further notice dated 18.10.2022 informing the appellant that in terms of Section 74 (8) of the CGST Act, 2017, where goods and services tax and applicable interest are paid within thirty days from the date of service of the notice under sub-section (1) of Section 74 of the Act, the penalty shall be 25 percent of such goods and services tax and the proceedings in respect of the goods and services tax, interest and penalty shall be deemed to be concluded, provided the said amount of penalty is also paid within 30 days.

(iii) In response, the appellant sent a communication dated 22.11.2022 stating that the show cause notice dated 18.10.2022 was issued on the basis of voluminous documents and requested to grant them two months time to go through the documents and the files, so as to submit an effective reply.

(iv) Thereafter, the respondent sent a notice dated 23.11.2022 informing the appellant that the GST audit is being conducted under Section 65 of the CGST Act, 2017 and it is different to the investigation being conducted by other agency. Therefore, by notice dated 23.11.2022, the respondent once again called upon the appellant to comply with the demands made in the earlier notice dated 30.08.2022, before 02.12.2022, without fail. A reply dated 29.11.2022 was sent by the appellant praying to drop all further proceedings initiated under Section 74 of the CGST Act read with Rule 142 (1) of the GST Rules 2017 in view of the parallel investigation being conducted by the Directorate General of GST Intelligence in connection with the same issue.

(v) Inspite of such reply dated 29.11.2022 of the appellant, the respondent passed the order dated 22.12.2022 stating that the documents sought for, have not been received inspite of intimation letters, therefore, the appellant was directed to attend an enquiry in person or through an authorised representative on or before 06.01.2023. It is in those circumstances, the appellant has filed the aforesaid writ petition by stating that when the audit under Section 65 of the Central Goods and Services Tax Act has been kick-started by the Directorate General of GST Intelligence, parallel proceedings initiated by the respondent under Section 74 of the said Act for the very same period of tax liability is uncalled for and it is legally impermissible.

4. The learned Judge, on hearing the counsel for both sides, dismissed the writ petition with the following observations:

"10. This Court carefully considered the rival submissions in the light of the fact situation of the case on hand. On such consideration, this writ Court is of the considered view that the writ petition does not cut ice or pass muster, it can only be dismissed and the reasons are as follows:

(a) The inspection was on 16.03.2020 and the first impugned notice was issued on 30.08.2022 this being a notice qua audit under Section 65 of TN~G & ST Act , the SCN dated 18.10.2022 was issued thereafter. Therefore, the SCN qua Section 74 of C~G & ST Act is post notice for audit under Section 65. This by itself douses the primary argument of the writ petitioner;

(b) The case laws pressed into service by the writ petitioner do not come to the aid of the writ petitioner in the case on hand as they are factually distinguishable on facts as already alluded to/delineated supra;

(c) It is well open to the writ petitioner to make it clear that the documents have already been submitted and that the same has been articulated/captured in the show cause notice itself vide paragraph 3 of the SCN (extracted and reproduced supra). Therefore, there is neither prejudice to the writ petitioner nor any illegality;

(d) The argument that Section 65 lead to Section 74 does not really make any headway qua writ Court owing to the chronicle which has been set out supra. The chronicle itself will make it clear that the inspection was followed by notice qua Section 65 audit and thereafter show cause notice came to be issued.

11. In the light of what has been alluded to earlier, it is delineated and made clear that there is nothing to demonstrate that when the audit under Section 65 has been kick started by way of a notice, show cause notice under section 74 is impermissible. Therefore, it is not necessary to even dilate on the principles governing interference by a writ Court qua show cause notice.

12. The argument predicated on subsection 7 of Section 65 also pales into insignificance in the light of the chronicle as Section 65 has preceded Section 74 in the case on hand.

13. Sequiter is, captioned writ petition fails and the same is dismissed. Consequently captioned WMP is also dismissed. There shall be no order as to costs."

5. The aforesaid order of the learned Judge dated 06.01.2023 passed in the writ petition, is assailed in this writ appeal, at the instance of the writ petitioner.

6. The learned Senior Counsel appearing for the appellant submitted that the proceedings under Section 74 of the CGST Act have already been initiated and show cause notice was also issued by the Additional Commissioner, Directorate General of Goods and Services Tax Intelligence (DGGI) Chennai Unit. Pursuant to such proceedings, the documents and/or files relating to the transactions, the appellant had, have been recovered. The

said proceedings was initiated in connection with the financial transactions the appellant had for the period from July 2017 to March 2021. For the very same period of transactions, the respondent issued the impugned notices under Section 65 of the Act. Thus, the parallel proceedings initiated against the appellant by two different agencies, would cause prejudice to the appellant and the same call for interference by this Court. Furthermore, for the notice dated 18.10.2022, the appellant had specifically sent a reply dated 22.11.2022 seeking to furnish the copies of voluminous documents relied on by the respondent, but the said documents have not been furnished. Therefore, the entire proceedings of the respondent are vitiated and they are in violation of principles of natural justice. Therefore, the learned Senior counsel for the appellant prayed for allowing this writ appeal.

7. Per contra, the learned Senior Panel Counsel appearing for the respondent would submit that the scope of investigation conducted by the respondent is different than the one initiated by the Additional Commissioner, Directorate General of Goods and Services Tax Intelligence (DGGI) Chennai Unit. Therefore, it cannot be said that the proceedings initiated by the respondent are without authority of law. The learned Judge, taking note of the above facts, has rightly dismissed the writ petition filed by the appellant. Thus, the learned counsel prayed for dismissal of this appeal as well.

8. We have heard the learned Senior counsel for the appellant and the learned Senior Panel Counsel appearing for the respondent and also perused the materials available on record.

9. On consideration of the facts narrated above, it is clear that during March 2020, there was an inspection conducted by the officials of the Directorate General of GST Intelligence and pursuant to such inspection, investigation has been going on for about two years. It is also an admitted fact that the documents relating to the financial transaction for the period from July 2017 to March 2021 have been handed over by the appellant to the officials of the Directorate General of GST Intelligence for their verification. While so, the respondent, invoking the provisions contained under Section 65 of the CGST Act, initiated proceedings and demanded the appellant to furnish the documents. There are exchange of communications between the appellant and the respondent, which make it clear that the documents sought for by the respondent were already seized and are in custody of the Directorate General of GST Intelligence. In this context, it is contended by the learned Senior counsel for the appellant that the proceedings initiated by the Directorate General of GST Intelligence and the respondent for the same period are

impermissible. The fact remains that the documents required to be produced by the respondent were already seized by other authority *viz*., the Directorate General of Goods and Services Tax Intelligence, Chennai Zonal Unit, during their search on 13.03.2020 and 16.03.2020 and that, those copies were not available with the appellant. In view of the same, this court is of the opinion that the respondent shall consider the documents, which are in possession of the other authority as well as in the custody of the respondent and also based on the replies submitted by the appellant on 10.09.2022 and 29.11.2022 and thereafter, pass appropriate orders, on merits and in accordance with law.

10. With the above direction, this writ appeal is disposed of. No costs. Connected miscellaneous petition is closed.

[**R.M.D,J**] [**M.S.Q, J**]
24.08.2023

Internet : Yes
Neutral Citation : Yes/No
gya/rsh

To

The Assistant Commissioner
Circle-V, Audit-II Commissionerate
Office of the Commissionerate of GST and Central Excise
No.692, 6th Floor, MHU Complex, Anna Salai
Nandanam, Chennai 600 035

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

gya

WA No. 220 of 2023

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