IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.18385 of 2022
and
W.M.P.Nos.17732 & 17863 of 2022

Mr.S.Ganesan .. Petitioner

vs

1.The Additional Director,
Directorate General of GST Intelligence
Coimbatore Zonal Unit,
Coimbatore – 641 001.

2.The Senior Intelligence Officer,
Directorate General of GST Intelligence
Trichy Regional Unit, 3rd 4th Floor,
No.47-47A, Heber Road,
Beema Nagar, Trichy – 620 001. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus and Declaration or any other orders or directions or any other appropriate writ

A. To call for the records of the 1st respondent in FORM GST INS-01 with references CBIC-DIN- 202110DSS3000000A2CE, CBIC-DIN-202110DSS3000000BBD5, CBIC-DIN-202110DSS30000312708 and

CBIC-DIN- 202110DSS30000318193 all dated 29.10.2021 and quash the same.

B. To declare the inspection conducted on 01.11.2021 by the 2nd respondent at the premises of M/s.Subramani Cloth Centre, Velur Main Road, Jeddarpalayam, Paramathi Velur, Namakkal Godown of M/s.Subramani Cloth Centre, Near Grocery shop, Four Road, Jedarpalayam, Paramathi Velur, Namakkal, Tamil Nadu-637 213, Godown of M/s.Subramani Cloth Centre, Near Doctor's clinic, Four Road, Jedarpalayam, Paramathi Velur, Namakkal, Tamil Nadu-637 213 and M/s.G.Kiruthiga Silks and residential premises of M/s.Subramani Cloth Centre, No.5/54, Nadu Street, Jedarpalayam, Paramathi Velur, Namakkal, Tamil Nadu – 637213 as illegal, as it done without proper authorization and is not in align with the provisions of Section 67 of the Central Goods and Services Tax Act, 2017.

C. Consequently to quash the orders of seizure in Forms in GST INS-02 dated 01.11.2021 issued by the 2nd respondent in pursuance to the unauthorized inspections.

D. A direction to release the bond dated 09.11.2021 in Form INS-04 along with Bank Guarantee dated 09.11.2021, obtained under duress from the petitioner and or

E. Pass any other Writ, order or direction which this Hon'ble Court may please deem it fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioner	:	Mr.R.Swarnavel
For Respondents (R1 & R2)	:	Mr.V.Sundareswaran Senior Panel Counsel

ORDER

The petitioner has challenged the impugned notice in FORM GST INS-01 with references CBIC-DIN- 202110DSS3000000A2CE, CBIC-DIN- 202110DSS3000000BBD5, CBIC-DIN-202110DSS30000312708 and CBIC-DIN- 202110DSS30000318193, all dated 29.10.2021 issued to the petitioner.

2. The impugned notice is an authorization for search issued to the petitioner under Section 67(2) of the Central Goods and Services Tax Act, 2017. The petitioner has challenged the impugned proceedings on the ground that there is no proper authorization. It is a specific case of the petitioner that Additional Directorate General of GST (Zonal) had authorized the 2nd respondent / the Investigation Team to search at four places as detailed below:

A. M/s.Subramani Cloth Centre/M/s.G.Sarumathi Silks, No.4/84, Four Road, Jedarpalayam, Paramathi Velur, Namakkal, Tamil Nadu – 637213 with reference CBIC-DIN- 202110DSS3000000A2CE dated 29.10.2021.

B.Godown of M/s.Subramani Cloth Centre, Near Grocery Shop, Four Road, Jedarpalayam, ParamathiVelur, Namakkal, Tamil Nadu – 637213 with reference CBIC-DIN- 202110DSS3000000BBD5 dated 29.10.2021.

C.Godown of M/s.Subramani Cloth Centre, Near Doctor's Clinic, Four Road, Jedarpalayam, ParamathiVelur, Namakkal, Tamil Nadu – 637213 with reference CBIC-DIN-202110DSS30000312708 dated 29.10.2021, and

D.M/s.Kiruthiga Silks and Residential premises of M/s.Subramani Cloth Centre, No.5/54, Nadu Street, Jedarpalayam, ParamathiVelur, Namakkal, Tamil Nadu – 637213 with reference CBIC-DIN-202110DSS30000318193 dated 29.10.2021.”

3. It is submitted that the authorization was confined only to conduct inspection at the four places mentioned above. However, the respondents have conducted inspection at Velur Main Road,

Jeddarpalayam, ParamathiVelur, Namakkal – 637213. Hence, it is submitted that the exercise carried on by the 2nd respondent was contrary to Section 67 of the CGST Act, 2017. It is submitted as follows:

> *"8. It is humbly submitted that the exercise of powers under Section 67 of CGST Act was flawed on several counts.*
>
> *a) First, since the goods and documents were found in the premises of M/s.Subramani Cloth Centre, they were not secreted in any place as contemplated under the said provision.*
>
> *b) Secondly, before exercising powers of search and seizure the proper officer was required to form reasons to believe that the goods were liable for confiscation or any documents or books or thing useful for or relevant to any proceedings under the CGST Act had been secreted. It is settled law that the expression "reason to believe" does not carry the same connotation as say "reason to suspect"; the standard of belief is that of a reasonable and honest person and not one based on surmises and conjectures, or mere suspicion.*
>
> *c) Thirdly, as far as (a) and (b) seizure authorizations, stated supra, the power to*

> *conduct search and seizure was given for one place but the actual inspection was done at a different place. Hence, the search is deemed to have been conducted without authorization and hence the third pre-requisites for the exercise of powers under Section 67(2) of the CGST Act were also not fulfilled."*

4. It is further submitted that the respondents have also issued a show cause notice, which is the subject matter of a separate writ petition in W.P.No.17366 of 2022 against the petitioner's father. It is submitted that the proceedings are liable to be quashed.

5. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondents.

6. The intrusion into the investigation and the investigation proceedings under the GST enactment cannot be countenanced as there appears to be a large scale evasion of tax. The petitioner has already been issued with summons by impugned communication in FORM GST INS-01. The Additional Director has authorized the 2nd respondent to search

the above premises as may be necessary and seize any goods or documents or other things relevant to the provisions of the Act, to produce the same forthwith before the 1st respondent under the CGST Act. There cannot be an impediment to an investigation under the Act and certainly the jurisdiction of this Court cannot be invoked to intrude into the ongoing investigation. There is no merits in the present writ petition. The present writ petition is nothing but an abuse of process of court proceedings. Therefore, the writ petition is liable to be dismissed.

7. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.08.2023
(2/2)

Index:Yes/No
Neutral Citation:Yes/No

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C.SARAVANAN, J.

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