IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 31.08.2023	**Pronounced on:** 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21825 of 2023
and
W.M.P.Nos.21152 & 21153 of 2023

Tvl. Ishagni Enterprises India Pvt. Ltd.,
Represented by Director,
28B, Yasinkhan Street,
Essa Pallavaram,
Chennai – 600 043. .. Petitioner

Vs.

The Assistant Commissioner (ST).
Pallavaram Assessment Circle,
Commercial Taxes Department,
Integrated CT & Regn. Department Building,
South Tower, Nandanam,
Guindy Taluk, Chennai – 600 035. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the order bearing GSTIN No.: 33AAFCI6473H1ZH / 2021-22 dated 25.04.2023, by the respondent herein and quash the same.

For Petitioner : Mr.C.A.Venkatasivakumar
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The petitioner has challenged the impugned order dated 25.04.2023 of the respondent.

2.By the impugned order dated 25.04.2023, the respondent has confirmed the demand proposed in the Show Cause Notice that preceded the aforesaid order.

3.The petitioner is a private limited company before this Court challenging the impugned Assessment order dated 25.04.2023 for the Assessment year 2021-2022. The impugned Assessment order is preceded by a Show Cause Notice dated 19.07.2022 issued for cancelling the GST registration of the petitioner for "non compliance of specified provisions of GST Act and the Rules made therein" and a subsequent order dated 08.06.2023, has been passed cancelling the GST registration of the petitioner.

4.The specific case of the petitioner is that the petitioner was defending itself in the proceedings initiated to cancel the GST registration vide Show Cause Notice dated 19.07.2022 in Form GST

REG-17/31 under Rule 22(1) read with sub-rule 2A and 21A of the respective GST Rules and therefore the petitioner was unaware of the Show Cause Notice dated 30.01.2023 in DRC-01 and the subsequent personal hearing on 14.03.2022 and 11.04.2023 and thus the petitioner could not participate in the proceedings to defend itself in the Show Cause proceedings initiated on 30.01.2023.

5.The principle submission of the learned counsel for the petitioner is that the petitioner was not issued with any of other notices that preceded the impugned order and that the impugned order is based on a incorrect Assessment of reality by stating that the petitioner is engaged in Bill Trading without actually supplying the goods by merely inspecting the residence of the Director of the petitioner which is merely registered as the principal place of business of the petitioner.

6.It is submitted that the respondents ought to have visited the additional place of business given in the GST Registration to arrive at a proper conclusion as to whether the petitioner was indeed engaged in Bill Trading / Circular Trading to facilitate passing illegal Input Tax Credit to the customers.

7.That apart, the learned counsel for the petitioner would draw attention to the decision of this Court rendered in W.P.No.16972 of 2023 in the case of one of the buyer to whom the goods were supplied by the petitioner and whose credit was sought to be blocked on the strength of the allegations that the petitioner was engaged in Bill Trading.

8.It is further submitted that this Court had dismissed the said Writ Petition as withdrawn, as the respondent had unblocked the credit of Rs.5,07,35,028/- availed by the said Writ Petitioner in W.P.No.16972 of 2023.

9.It is therefore submitted that once the credit has been unblocked and allowed to be utilised, it implies that indeed the petitioner had supplied the goods and that there was no Bill Trading by the petitioner.

10.The impugned order is defended by the learned Government Advocate for the respondent on the ground that not only a notice was issued for cancellation of GST Registration on 19.07.2022, which eventually culminated in order cancelling the GST Registration of the petitioner on 08.06.2023, it is submitted that the petitioner was issued with a notice in DRC-01A on 10.01.2023 which called upon the petitioner to pay the disputed input tax credit which was passed on the buyer.

11.It is submitted that the petitioner's principal place of business and also the additional place of business were also inspected on 22.09.2022 and it was found that the space in the residents and the additional place of business was not sufficient to carry on the business.

12.Therefore, it is submitted that the petitioner could not have passed on huge amount of input tax credit or effected supply of goods. That apart, it is submitted that summons was sought to be served on the petitioner's director on 22.09.2022, which was refused.

13.It is further submitted that the director of the petitioner was ask to appear before the respondents on 23.09.2022. However, there was no response. Therefore, the summons was stuck at the principal place of business on the same day in terms of Section 169(1b) of the TNGST Act, 2017.

14.It is submitted that another summons was served on the following date and was sent by post which was returned as unserved on 16.10.2022. It is therefore submitted that thereafter DRC-01 was issued on 10.01.2023, asking the petitioner to pay the aforesaid amount DRC-01 dated 30.01.2023.

15.It is submitted that the petitioner was called upon to file a reply on 01.03.2023 and also appear for a personal hearing on 09.02.2023. However, the petitioner failed to appear. It is submitted that subsequently notices dated 14.03.2023 and 11.04.2023 were also sent asking the petitioner to come for a personal hearing and also to file a reply to the Show Cause Notice in DRC-01 dated 30.01.2023. However, there was no response.

16.Under these circumstances, the impugned order has been passed. The learned Government Advocate for the respondent further submits that the director of the petitioner has obtained GST registration with the same address in the name of six different entities and was carrying on fraudulent business of passing on irregular and illegal input tax credit by resorting to Bill Trading.

17.That apart it is submitted that the registration of Wahid Enterprises and Bharath Traders obtained by the petitioner's Director for the same address were suspended on 23.07.2022 and 21.07.2022. On the same day, the petitioner’s directors filed application for including the same addres as the additional place of business for the petitioner.

18.It is therefore submitted that the petitioner was facilitating large scale evasion of tax by issuing bogus invoices without any supply of goods. It is therefore submitted that the petitioner was indeed engaged in Bill Trading and thereby facilitating large scale evation of tax. It is therefore submitted that the writ petition is liable to be dismissed with exemplary costs.

19.By way of rejoinder, the learned counsel for the petitioner would submit that the petitioner was unaware of the above submissions. He further submits that the petitioner was having a godown measuring to an extent of 10,000 sq.ft, where the goods were kept / stored for facilitating the inward and outward movement of the said goods.

20.It is submitted that the respondent did not specify the provision or regulation according to which the said Act was considered as illegal. The E-way Bills are authenticated documents generated by the respondent which is being considered as illegal.

21.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

22.*Prima facie*, it appears that the petitioner is engaged in Bill Trading activity facilitating illegal / irregular Input Tax Credit being availed by the person by whom the petitioner was issuing such invoices.

23.*Prima facie*, it appears that the petitioner is a dealer registered under the provisions of the respective GST enactment was engaged in issuing bogus invoices for passing ineligible Input Tax Credit. The same address was used for obtaining different GST Registrations in the name of different entities. As far as Registration in GST Registration Certificate No.33AAFCI6473HIZH obtained in the name of the petitioner is concerned, the petitioner was issued with a notice on

19.07.2022. The said notice was issued for suspending the petitioner's registration in Form GST REG-06 and called upon the petitioner to show cause as to why, the registration granted should not be cancelled.

24.It appears that the petitioner's registration has also been subsequently cancelled on 08.06.2023. The record indicates that there was a inspection on 22.09.2022. It was followed by two summons dated 22.09.2022 and 23.09.2022 to the Director of the petitioner. The Director of the petitioner was called upon to appear to give statement on 23.09.2022. The summons were to be received.

25.Under these circumstances, the respondents have issued DRC-01A under Rule 142(1A) of the GST Rules followed by a Show Cause Notice dated 30.01.2023 in DRC-01 under Rule 142 read with Section 74 of the respective GST enactments.

26.The petitioner was also called for a hearing by two separate notices dated 14.03.2023 and 11.04.023. However, the petitioner failed to respond to the same, which has now culminated in the impugned order dated 25.04.2023.

27.The impugned order has been passed on 25.04.2023 is an appealable order in terms of Section 107 of the TNGST Act, 2017. Although attempt is made by the learned counsel for the petitioner to show that the petitioner has a huge place of business from where the petitioner is trading in goods, such disputed question of facts cannot be decided in this summary proceedings under Article 226 of the Constitution of India.

28.Therefore, this Writ Petition has to fail. However, liberty is given to the petitioner to file a statutory appeal before the Appellate Authority under Section 107 of the TNGST Act, 2017, within a period of 30 days from the date of receipt of a copy of this order.

29.Subject to the petitioner pre-depositing the amount prescribed under Section 107 of the TNGST Act, 2017, pursuant to the impugned order dated 25.04.2023, all further coercive steps shall be kept in abeyance pending disposal of the proposed appeal to be filed by the petitioner.

30.The Writ Petition is dismissed with the above observations and liberty. Consequently, the connected Miscellaneous Petitions are closed. No costs.

10.11.2023

Jas / krk

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Deputy Commissioner,
Office of the Deputy Commissioner of GST and Central Excise,
Irungattukottai Division,
Chennai Outer Commissionerate,
C-48, TNHB Building,
Annanagar,
Chennai – 600 040.

C.SARAVANAN, J.

Jas / krk

W.P.No.21825 of 2023

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