IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25626 of 2023
and
W.M.P.Nos.25024, 25028, 25030, 25031 and 25032 of 2023

M/s.Sabbs Infra and Security Private Limited,
1C, Heritage Arcade (Plot No.900), S.R. Nagar,
Hyderabad – 500 038,
Represented by its Director
Rama Krishna Sabbineni ... Petitioner

Vs.

1.The Assistant Commissioner of GST & Central Excise,
Madhavaram Division,
Chennai North Commissionerate,
Newry Towers, No.2054, I Block, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

2.The Additional Commissioner of GST & Central Excise,
Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the impugned order bearing Reference Order-in-Original

No.53/2022CH.N(ADC) dated 28.03.2022 passed by the second respondent, quash the same.

For Petitioner : Mr.T.R.Ramesh

For Respondents : Mr.T.Ramesh Kutty
Senior Standing Counsel

ORDER

Mr.T.Ramesh Kutty, learned Senior Standing Counsel takes notice on behalf of the respondents.

2. The petitioner has approached this Court against the impugned Order-in-Original No.53/2022CH.N(ADC) dated 28.03.2022 passed by the second respondent.

3. The specific case of the petitioner is that the petitioner had vacated the premises long before and therefore, the Show Cause Notice dated 21.04.2021 that preceded the impugned order had thus remained unserved on the petitioner.

4. The further case of the petitioner is that mandatory requirements of Section 37C(2) of the Central Excise Act, 1944 also have not been complied by the respondents by affixing the Show Cause Notice at the place of business/factory. It is further submitted that mahazar drawn has also not been served on the petitioner.

5. On the other hand, the learned Senior Standing Counsel for the respondents would submit that the petitioner has shifted the place of business without proper intimation and therefore, the respondents had no other option but to serve notice on the petitioner in accordance with the provisions of the Central Excise Act, 1944 as made applicable to the disputes under the provisions of the Finance Act, 1994. It is submitted that the Show Cause Notice was indeed affixed at the business premises.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

7. The petitioner has been negligent in not informing the Department about the change of address. Either, the petitioner has to file a statutory

appeal within the time specified under the provisions of the Finance Act, 1994 or has to furnish a security for the case to be re-heard afresh as admittedly the petitioner was negligent in not informing about the change of place of business.

8. Considering the fact that the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner under Section 85 of the Central Excise Act, 1944, liberty is given to the petitioner to file a statutory appeal within a period of thirty days from the date of receipt of copy of this order together with mandatory pre-deposit under Section 35F of the Central Excise Act, 1944 as made applicable under Section 83 of the Finance Act, 1994.

9. Subject to such compliance, the petitioner's appeal shall be numbered and disposed by the Appellate Commissioner on merits in its turn. All further recovery proceedings shall be kept in abeyance for a period of thirty days. Garnishee Order shall stand lifted for a period of 30 days alone, within which time, the petitioner shall file the appeal. If the appeal is not filed within the time specified above, this order shall stand automatically vacated.

10. It is made clear that the petitioner shall not make any attempt to transfer the entire amount lying in the bank account with a view to defeat the interest of the revenue. In the event of the petitioner making such an attempt, the respondents are at liberty to proceed against the petitioner. It is further made clear that, to balance the interest of the petitioner and the revenue, only amounts to meet statutory liabilities and salaries and normal business expenses can be allowed to be transferred with the approval of the respondents for the period of 30 days specified above.

11. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

31.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
dpa/arb

C.SARAVANAN, J.

dpa/arb

To

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