IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.25847 of 2023
and
W.M.P.Nos.25292 and 25294 of 2023

S.Kaja Mohideen,
Son of Mr.Shagabudeen,
(Proprietor of M/s.Rhea Shoes),
No.23, 2nd Street, New Bethlehem,
Ambur,
Thirupathur – 635 802. ... Petitioner

Vs

1.The Commissioner of GST and Central Excise,
Newry Tower No.2054, I Block,
II Avenue, Anna Nagar, Chennai – 600 040.

2.The Additional Commissioner of Central Tax,
Office of the Commissioner of GST and Central Excise,
Newry Towers, No.2054, I Block,
II Avenue, Anna Nagar, Chennai – 600 040.

3.The Commissioner of Police,
Greater Chennai, Vepery,
Chennai – 600 007.

4.The Superintendent of Police,
Thirupattur,
Thirupattur District – 635 602.

5.The Branch Manager,
Bank of Baroda,
Gudiyatham, Tamilnadu.

6.The Commissioner of Police,
Cyber Crime Branch,
Egmore, Chennai.
(Suo-moto impleaded by this Court in
W.P.No.25847 of 2023 vide
order dated 01.09.2023.) ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records of the Impugned Order-in-Original No.26/2023-GST (ADC), C.No.GEXCOM/ADJN/GST/JC/52/2022-ADJN, DIN-20230359XL0000444A48, dated 31.03.2023 on the file of the 2nd respondent and quash the same as illegal, arbitrary, unfair, unreasonable and perverse and in clear abuse of process of law and in without or in excess of jurisdiction and in a clear violation of principles of natural justice.

For Petitioner : Mr.A.K.Jayaraj

For Respondents : Mr.T.Ramesh Kutty for R1 and R2
Senior Standing Counsel

: Mr.P.Ganesan for R3, R4 and R5
Additional Government Pleader

ORDER

The Commissioner of Police, Cyber Crime Branch, Egmore is suo moto impleaded as respondent No.6.

2. The specific case of the petitioner appears to be that the petitioner was carrying on business briefly under the VAT regime during 2013 and that the petitioner had closed down the business way back in 2013. It is submitted that the respondents have given registration to the petitioner under the TNGST and CGST Act, 2017.

3. It is informed that GST registration has been obtained by the third person mis-using the facility given by the Central and State Government under the respective Gst enactments with effect from 01.07.2017. It is further submitted that the misuser has made unauthorised transaction and has passed on illegal credits using the GST registration obtained in the name of the petitioner. The petitioner has been issued with a notice dated 08.03.2022 which has culminated now in the impugned order dated 31.03.2023, whereby, the petitioner has been

imposed with penalty of Rs.2,35,64,255/- under the respective GST enactments and further penalty of Rs.1,89,77,420/- for allegedly passing on illegal credit and further penalty of Rs.25,000/- as detailed below:

> (iv)I impose penalty of Rs.2,35,64,255/- (CGST:Rs.1,16,58,142/- and SGST of Rs.1,19,03,113/-) under Section 122(1)(vii) and Section 122(1)(xvii) read with Section 122(2)(b) of the CGST/TNGST Act, 2017 for availing ITC without actual receipt of goods in contravention of provisions as discussed in above paras;
>
> (v)I impose a penalty of Rs.1,89,77,420/- (IGST Rs.3,70,674/-; CGST Rs.93,03,373/- and SGST Rs.93,03,373/-) under Section 122(1)(ii) and 122(1)(vii) of the CGST/TNGST Act) for passing of ITC to the extent by filing GSTR-1 without actual supply of goods;
>
> (vi)I also impose penalty of Rs.25,000/- on the notice under the provisions of Section 122(3)(d) of the CGST/TNGST Act 2017, for failure to appear, when summons were issued to them.

4. The learned counsel for the petitioner would submit that the Show Cause Notice refers to the E-mail ID, mobile number and Bank Account Number along with the GST registration application. It is submitted that the E-mail ID, mobile number and Bank Account Number are not that of the petitioner. It is submitted that the petitioner had not applied for GST registration and the petitioner's PAN was mis-used for obtaining the aforesaid registration.

5. The learned Senior Standing Counsel for the respondents first and second and learned Additional Government Pleader for the third to fifth respondents on the other hand would submit that the matter would required a detailed consideration and the petitioner's compliant before Superintendent of Police, Thirupathur is awaited.

6. The learned counsel for the respondents submits that the petitioner has an alternate remedy by way of filing an Appeal before the Appellate Authority under Section 107 of the TNGST Act, 2017 and under the provisions of the respective TNGST Act.

7. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the first and second respondents and learned Additional Government Pleader for the third, fourth and fifth respondents. There is no point in keeping this writ petition pending.

8. This writ petition is therefore disposed by directing the sixth respondent to investigate along with respondent nos.1 to 4 and to give a report as to whether indeed the GST registration was obtained by the petitioner or by any of the nominee of the petitioner or by a third person or a stranger. The penalty imposed in the impugned order will stand affirmed against the petitioner, in case the investigation culminates in a finding against the petitioner.

9. The respondents from the Tax Department and the respondents from the Law Enforcing Department namely the Police and the Cyber Crime shall investigate and to go to the root of the alleged wrongful registration obtained in the name of the petitioner and complete the investigation within a period of 12 months from the date of receipt of a copy of this order. In case, it is found that the petitioner was not involved in the registration under GST registration, the penalty imposed against the petitioner shall stand automatically vacated.

10. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

01.09.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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C.SARAVANAN,J.

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