IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.30270 of 2023
and
W.M.P.No.29871 of 2023

A.Jayapal
S/o. Arthanari Mudaliar ...Petitioner

Vs

1. The Assistant Commissioner (ST)
   Chithode Assessment Circle,
   Erode District.

2. Mitab Solutions
   No.75, Thambu Chetty Street,
   Mannady, Chennai – 1. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the first respondent dated 10.04.2023 in proceedings No.GSTIN 33ACUPJ1402B1Z7/2019-20 and to quash the same.

For Petitioner : Mr.S.N.Subramani
For Respondents : Ms.Amrita Dinakaran
Government Advocate (T)

ORDER

This Writ Petition has been filed challenging the proceedings passed by the first respondent dated 10.04.2023.

2. The case of the petitioner is that he has purchased a Television, and thereafter, he has also paid the entire amount along with GST and the aggregated total amount paid by the petitioner was Rs.1,03,500/-. In these circumstances, the respondent initiated proceedings against the petitioner and passed the impugned order. Hence, the present Writ Petition.

3. Mr.S.N.Subramani, learned counsel for the petitioner would submit that, since the petitioner met with an accident, he was not able to appear before the respondent along with documents on the date fixed for hearing, however, the first respondent proceeded to pass the impugned order. Therefore, the learned counsel prayed for setting aside the same.

4. Ms.Amrita Dinakaran, the learned Government Advocate would submit that the respondent-Department have inspected the premises of the second respondent, viz., Mitab Solutions and during such inspection, it is found that no such person is carrying on any business under the name and style 'Mitab Solutions' and therefore, it is found that the transactions that took place were without supply of goods so as to avail the benefit of Input Tax Credit.

4.1 Apart from the above submission, the learned Government Advocate also produced a proceedings bearing Ref. No.3291/2022/A14, dated 24.03.2022, wherein it is stated that certain individuals are involved in fabricating fake GST registrations to enable the issuance of GST invoices without supply of goods and the preliminary quantification revealed that the total value of fake invoices without supply of goods is around Rs.352.09 crores and the amount of fraudulent ITC passed on by fake firms is around Rs.63.82 crores, which includes the second respondent-Firm as well, bearing GSTIN No.33EWHPP4342D1Z0. Further, it is fairly submitted that had the petitioner appeared before the respondent together with relevant documents, the respondent-Department would have been in a position to find out whether the said transaction is authentic or not, however, since the petitioner also failed to appear during the hearing, the respondent-Department was not able to find out whether the petitioner has purchased the television from the supplier or not and having left with no other option, the respondent passed the impugned order.

5. Taking into consideration of the submission made by the learned counsel for the petitioner and the learned Government Advocate for the respondents and on perusal of the document, it appears that the present transaction involves finding of fact to a larger extent, since, the respondent made submission that no such person is carrying on any business under the name and style "Mitab Solutions' (second respondent herein) in the premises, where, the invoice with regard to the purchase of television was alleged to have been issued to the petitioner.

5.1 Further, considering the fact that the respondent-Department also found it difficult to ascertain whether the petitioner has really purchased the television from the supplier, second respondent, whose existence and place of business in the said premises under surmises and conjectures due to the failure of the petitioner to appear before the respondent on the date fixed for hearing, in these circumstances, this Court while declining to grant the relief sought for by the petitioner, is simultaneously, inclined to grant to liberty to the petitioner to challenge the issue by way of appeal.

6. Accordingly, the Writ Petition is dismissed granting liberty to the petitioner to approach the Appellate Authority by way of filing an Appeal withing a period of 30 days from the date of receipt of a copy of this order, in which case, the Appellate Authority shall entertain the Appeal without raising any issue on limitation aspect.

7. Further, this Court taking into consideration of the submission of the respondent that 97 bogus Companies have been created and indulged in transactions in a similar away, it is left open to the respondent-Department to take appropriate action against those Companies by initiating penalty proceedings apart from initiating criminal proceedings for having hoodwinked the Department. No costs. Consequently, connected Miscellaneous Petition is closed.

18.10.2023

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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