



*W.P.No.34680 of 2022
and WMP.No.34111 of 2022
in W.P.No.34680 of 2022*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

W.P.No.34680 of 2022

and

WMP.No.34111 of 2022

in

W.P.No.34680 of 2022

M/s.Suvarna Fibrotech Pvt Ltd.,
Rep. By its Managing Director-Nelvin Palamattur Verghese,
No.555/1, Kizhminnal,
Puttuthakku Village,
Vellore District-632 517.

... Petitioner

-Vs.-

1. The Assistant Commissioner (ST) (FAC)
Ranipet Sipcot,
Vellore, Vellore District.
2. The Appellate Deputy Commissioner,
Goods and Service Tax-Appeal,
Vellore Office Camp, No.4, Bharathiyar Salai,
Fort Round Road, Vellore-632 001, Vellore District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorari, to call for the records on the files of the
impugned proceedings of the 2nd respondent made in Appeal No. &
Year:AP/GST/106/2021 dated 13.10.2022 quash the same.



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For Petitioner : Mr.S.Rajasekar

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader (Taxes)

ORDER

In the captioned writ petition, 'an order dated 13.10.2022 bearing reference Appeal No & Year: AP/GST/106/2021' [hereinafter 'impugned order' for the sake of convenience and clarity] made by 'second respondent' [hereinafter 'Appellate Authority' for the sake of convenience] has been called in question.

2. In the case on hand, three statutes and Rules thereunder operate, they are (i) 'the Central Goods and Services Tax Act, 2017' [hereinafter 'C-G & ST Act' for the sake of convenience and clarity], (ii) 'Tamil Nadu Goods and Services Tax Act, 2017 (Tamil Nadu Act 19 of 2017)' [hereinafter 'TN-G & ST Act' for the sake of convenience and clarity] and (iii) 'the Integrated Goods and Services Tax Act, 2017' [hereinafter 'I-G & ST Act'].

3. Before plunging into the matter, it is necessary to record that an appeal *inter alia* under Section 112 of TN-G & ST Act is available to the writ



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petitioner qua the impugned order. This appeal will be before a Tribunal but this writ Court is informed by learned counsel for writ petitioner that the Tribunal has not been constituted and therefore, there is no Tribunal as of today. This obtaining position is not disputed by the learned Revenue counsel.

4. In the aforesaid backdrop, Mr.S.Rajasekar, learned counsel for writ petitioner who is before this Court submitted that the impugned order may please be tested by this Court. In the same view of the matter, Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) [Revenue counsel] accepts notice on behalf of both the respondents, with the consent of both learned counsel, main writ petition was taken up and heard out.

5. A thumbnail sketch of facts will suffice. Short facts are that the writ petitioner is in the business of manufacturing Fibre glass composite moulded products; that the writ petitioner has been filing monthly returns under C-G & ST as well as TN-G & ST Acts; that the writ petitioner's place of business was inspected by Enforcement Wing Officials on 24.04.2019 followed by inspection on various dates, the last of the dates being 28.05.2019; that during the course of inspection, certain defects were noticed and an inspection report was made; that this pertains to 'Financial Year 2019-20' [hereinafter 'said



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FY' for the sake of convenience and clarity]; that there are three heads of defects and they are, (a)alleged sales suppression; (b) contravention of statutory provisions [3 in number being (i) non-maintenance of particulars of name/complete address of suppliers qua goods and services chargeable to tax; (ii) non-maintenance of particulars of name/complete address qua entities to whom goods and services were supplied and (iii) monthly production accounts showing quantitative details of raw materials used in the manufacture and quantitative details of goods manufactured including the waste and by-products not maintained qua sub-Rule(12) of Rule 56 of C-G & ST and TN-G & ST Rules] and (c) GSTR -1 filed upto 2019 but GSTR 3 B not filed, tax collected but not paid to the Government; that the first respondent being Original Authority took up the matter and made 'an order dated 23.01.2020 bearing reference GSTIN No.33AACCS3953PIZY/2019-2020' [hereinafter 'order of Original Authority' for the sake of convenience] imposing a penalty equivalent to 100% of tax as regards (a), Rs.25,000/- as regards (b) (for three contraventions) under Section 125 of TN-G & ST and C-G & ST and 100% penalty under Section 122(1) of TN-G & ST and C-G & ST as regards (c). This order was carried in appeal by writ petitioner and the Appellate Authority



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(second respondent) passed a 14 page detailed order capturing various facets of fiscal laws and confirmed the order of Original Authority.

6. Learned counsel for writ petitioner, adverting to the grounds of appeal dated 19.05.2021 submits that each of the alleged defects have been assailed but the same have not been considered by the Appellate Authority. This hardly matters as the Original Authority has dealt with these matters and it is well open to this Court to look at the grounds and see if really the order of Original Authority deserves to be interfered with but this legal drill shall not be construed as meaning that Appellate Authority has not considered the grounds. Suffice to say that the Appellate Authority has proceeded more on general fiscal law applying the same to facts and circumstances of the case on hand vide an elaborate order i.e., impugned order.

7. As regards (a), ground raised by the writ petitioner is, under Section 44 of TN-G & ST and C-G & ST Acts read with Notification No.4 of 2021-Central Tax, dated 28.02.2021 for 'said FY' petitioner had time for reconciling the annual return till 31.03.2021, whereas the inspection was in April of 2019. To be precise, the last date was 28.04.2019 as already alluded to supra. This takes this Court to Section 74 of TN-G & ST and C-G & ST Acts.



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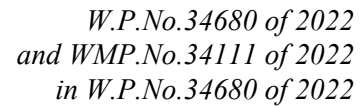
A careful perusal of Section 74 makes it clear that 'suppression of facts to evade tax' is the expression used. As the writ petitioner has time till 31.03.2021 to reconcile, it may not really qualify as suppression but that does not take the writ petitioner away from the rigour of penalty as Section 73 is available. Section 73 talks about tax that has not been paid or short paid and it excludes 'suppression of facts to evade tax'. Section 74(1) reads as follows:

'74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-mis statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.'

8. Section 73(1) reads as follows:

'73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or



(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.'

9. A careful perusal of the language in which the above provisions are couched will make it clear that levy of penalty under Section 74 may not be attracted but levy under Section 73 is attracted. This leaves the writ petitioner in a situation which can be described as fire to frying pan or devil to deep sea. The reason is sub-section (9) of Section 73, which reads as follows:

'73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts

(1) ...



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(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) ...

(9) *The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.'*

In the instant case, penalty as regards purported suppression is only Rs.3890/- and if Section 73(9) is applied, it would become Rs.10,000/-. Writ petitioner would be worse off by filing the writ petition. Therefore, this writ Court deems it appropriate to leave it at that and say that interference is refused but it is made clear that it cannot be put against the writ petitioner that there is 'suppression of facts to evade tax' within the meaning of Section 74(1) and it is only a case of tax not being paid within the meaning of Section 73(1). This drops the curtains on the first point. As regards the second point, the argument is that three non compliances qua statutory provisions should be treated as



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minor breach within the meaning of Section 126. To be noted, Sections 125 and 126 read as follows:

'125.General penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.'

'126.General disciplines related to penalty

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation : For the purpose of this sub-section, -

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than five thousand rupees;

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this Act shall be depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this Act shall while imposing



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penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.'

10. A careful perusal of Section 125 makes it clear that it is more in the nature of a residuary provision. In the case on hand, as there are three specific non-compliances qua statutory requirements, it was well open to the Original Authority to invoke Section 125 with regard to each of the non-compliances and levy Rs.25,000/- each, which would have added upto Rs.75,000/-. However, in the case on hand, Original Authority has levied penalty of only Rs.25,000/- for all three non-compliances put together. Therefore, it cannot be gainsaid that maximum penalty to which a general



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penalty under Section 125 can extend, has been exercised in the case on hand.

To be noted, as regards three non-compliances, there is no disputation or contestation on facts. This by itself drops the curtains on the second point. As regards the third point, the point that is urged by writ petitioner is 100% penalty under Section 122(1) is not attracted and a lenient view should have been taken by resorting to Section 126. Section 122 captioned 'Penalty for certain offences' provides for a particular penalty under sub-clause (iii) of sub-section (1), which reads as follows:

'122.Penalty for certain offences

(1) Where a taxable person who -

(i) ...

(ii) ...

(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;'

11. In the considered view of this Court, this by no means fits into Section 126 in the light of Explanation thereat. Explanation thereat makes it clear that the tax liability or the amount of tax involved should be less than Rs.5,000/- or it should be a omission or mistake in documentation which is



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easily rectifiable in the same as an error apparent on the face of record. Sub-section (6) makes it clear that Section 126 will not be attracted, when the penalty is expressed as a fixed percentage. In the case on hand, Section 122(1)(iii) read with Section 122(1) makes it clear that it is expressed in both units namely a fixed sum as well as a fixed percentage. On this ground also Section 126 does not come to the aid of the writ petitioner. To be noted, interest under 50(1) is not subject matter of dispute or contestation.

12. Sum sequitur is, all the three points on which the order of Original Authority is predicated do not call for interference even if the grounds urged/raised by the writ petitioner before the second respondent-Appellate Authority are considered on merits.

13. The sum sequitur is, captioned writ petition fails and the same is dismissed. Consequently, captioned WMP is also dismissed. There shall be no order as to costs.

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Index : Yes/No

Speaking Order : Yes/No

Neutral Citation Case: Yes/No

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M.SUNDAR, J

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