IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.6200 of 2024
and
W.M.P.Nos.6872 & 6873 of 2024

Tvl.Mahadev Agencies,
Rep. by its Proprietor,
Mr.Bhagirath Singh,
No.122/2, Govindappa Naicken Street,
Sowcarpet, Chennai – 600 079. ...Petitioner

-Vs-

1.The Deputy State Tax Officer – II, (FAC)
Kothawalchavadi Assessment Circle,
Integrated Commercial Taxes Buildings,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003.

2.The Assistant Commissioner (ST),
Kothawal Chavadi Assessment Circle,
Integrated Commercial Taxes Buildings,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, calling for the records pertaining to the impugned order vide GST-33CDQPS7982C1ZZ/2017-18 dated 18.05.2023 for the Assessment year

2017-2018, passed by the 1st respondent and quash the same.

For Petitioner : Mr.K.M.Malarmannan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate (Tax)

O R D E R

This writ petition is filed for issuance of a Writ of Certiorari to quash the impugned order of the 1st respondent vide GST-33CDQPS7982C1ZZ/2017-18 dated 18.05.2023 for the Assessment year 2017-2018.

2. The case of the petitioner is that the petitioner is an assessee under the respondents vide GTSN-33CBQPS7982C1ZZ and also a trader in Hardware. The 1st respondent passed an impugned order against the petitioner firm namely “Mahadev Agencies” for the assessment year 2017-18 on 18.05.2023. The impugned order passed by the 1st respondent was based on the trunover mismatch between GSTR-3B and GSTR-1 and the 1st respondent has levied tax to the tune of Rs.38,694/- each under the CGST and SCST Acts and Rs.19,748/- under IGST Act and also levied interest and penalty on the above mentioned tax.

3. Learned counsel for the petitioner submitted that there is no suppression of tax for the year 2017-18. The Accountant of the concern has inadvertently uploaded the sales turnover of another company with the similar name of the petitioner company i.e., Tvl.Mahadev Agencies with GSTN/33AFDPB8955P1Z1, while filing the return in GSTR-1 of the petitioner company and the above said concern has its place of business at Narayana Mudali Street. The sales amount to a tune of Rs.3,44,391/- which is irrelevant to the petitioner firm. The Accountant in the month of September 2017 has uploaded the sale of the other company for the month of August 2017 in the GSTR-1 of the petitioner firm. Hence, the difference in turnover noted by the 1st respondent in the impugned order passed by him on 18.05.2023.

4. Learned counsel further submitted that the 1st respondent has served a show cause notice on 10.04.2023 through the portal based on the turnover discrepancies found between the GSTR-1 and GSTR-3B for the year 2017-18 to a tune of Rs.3,44,391/- and proposed to levy tax, interest and penalty on the above mismatch. The Accountant did not notice the show

cause notice sent by the 1st respondent through the portal and the petitioner has no knowledge of computers so he could not reply to the show cause notice issued in the portal on 10.04.2023. The 1st respondent did not give sufficient hearing before passing the order and also he has not bothered whether the show cause has been received or not and the petitioner had not received the notice through post, message, phone calls or mail. If the petitioner could have got the opportunity of filing reply to the show cause notice issued by the 1st respondent dated 10.04.2023 and the notice proposals would have been dropped. As the petitioner was unaware of the notice, he could not reply and hence the impugned order has been passed against the petitioner. The petitioner came to know about the impugned order only after the receipt of the "Urgent Notice" sent by the 2nd respondent through post. Further, the time limit to file the statutory appeal under Section 107 of the TNGST Act has been lapsed due to the above said genuine reason only. Aggrieved by the impugned order passed by the 1st respondent dated 18.05.2023, the petitioner has approached this Court by way of filing this writ petition.

5. Learned Government Advocate (Tax) appearing for the

respondents submitted that on comparison of the taxable supplies reported by the petitioner through GSTR 3B monthly returns with the corresponding GSTR-1 statement of details of outward supplies of goods or services filed by the petitioner during the following period it was noticed that there have been significant differences or anomalies in the turnover on taxable supplies and corresponding taxes due therein. The petitioner thus short paid the taxes and the short paid taxes are proposed to be determined under Section 73 of the TNGST Act 2017 / CGST Act 2017. The petitioner was requested to make payment of the differences in taxes which were short paid in Form DRC -03 (either by debit of credits available in the electronic credit ledger or by debiting cash ledger) along with corresponding interest payable through the electronic cash ledger of the GST common portal within 30 days of receipt of the notice. In case the petitioner contests that there are such short payments of tax, then the petitioner may file a reconciliation statement along with proof of records on correctness of payment of taxes for verification and he is also liable for interest @ 18% per annum under Section 50 of the Act for the number of days delayed to be calculated from the date of filing the corresponding monthly returns and up to the date of payment of the difference in taxes through DRC-03.

6. Learned Government Advocate (Tax) further submitted that as per the provision of Section 75(9) of the Act which stipulates that "the interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability". The petitioner is liable for penalty under Section 73 read with Section 122(2)(a) of the Act, for short payment of taxes at the rate of 10% of taxes short paid. Hence, the petitioner was directed to make the payment within three months, failing which proceedings shall be initiated against the petitioner to recover the outstanding dues as per Section 79 the Act.

7. Heard both sides and perused the materials available on record.

8. In the instant case, the 1st respondent served a show cause notice on 10.04.2023 to the petitioner through the portal based on the turnover discrepancies found between the GSTR-1 and GSTR-3B for the year 2017-18 to the tune of Rs.3,44,391/- and proposed to levy tax, interest and penalty on the above mismatch. The petitioner did not notice the show cause notice sent by the 1st respondent through the portal. The petitioner claimed that he

has no knowledge of computers and he could not reply to the show cause notice issued in the portal on 10.04.2023. The 1st respondent did not give sufficient hearing before passing the order and the petitioner could not have the opportunity to file a reply to the above said show cause notice. The petitioner came to know about the impugned order only after the receipt of the "Urgent Notice" sent by the 2nd respondent through post. Further, the time limit to file the statutory appeal under Section 107 of the TNGST Act has been lapsed due to the aforesaid reasons. In the proceedings of the 1st respondent dated 18.05.2023, the petitioner was directed to pay the interest penalty for the disputed tax amount of Rs.97,136/-. However, the petitioner has not preferred any statutory appeal provided under the Act as submitted by the learned Government Advocate (Tax) and it is also admitted by the petitioner.

9. **In view of the above factual matrix of the case, this Court is of the considered view that the petitioner shall pay 15% of the disputed tax amount, i.e. Rs.97,136/- on or before 25.03.2024 and on payment of the same, the petitioner may prefer the appeal before the Deputy Commissioner GST Appeals within a period of two weeks thereof.**

J.SATHYA NARAYANA PRASAD, J.

10. In the result, the **writ petition stands disposed of with the above observation and direction**. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2024

cda
Index : Yes/No
Speaking/Non Speaking order

To

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