IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.Nos.7051, 7053, 7054, 7058 & 7059 of 2024
and
W.M.P.Nos.7869, 7876, 7879, 7881, & 7882 of 2024

Tvl. SK Knit Apparels,
Rep., by its Partner,
110, Sangarammal Thottam,
Saminathapuram,
Anuparpalayam Post,
Tiruppur 641 658. ...Petitioner in all W.P's

Vs.

1. Deputy Commissioner (ST)-GST Appeal,
   Salem and Erode,
   Commercial Taxes Building,
   Brough Road,
   Erode.
2. Assistant Commissioner (ST),
   Anuparpalayam Assessment Circle,
   Tiruppur.

... Respondents in all W.P's

Prayer in W.P.No.7051 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the order in Appeal No.AP/GST/495/2023 dated 26.12.2023 passed by the first respondent and quash the same.

Prayer in W.P.No.7053 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the order in Appeal No.AP/GST/496/2023 dated 26.12.2023 passed by the first respondent and quash the same.

Prayer in W.P.No.7054 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the order in Appeal No.AP/GST/497/2023 dated 26.12.2023 passed by the first respondent and quash the same.

Prayer in W.P.No.7058 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the order in Appeal No.AP/GST/498/2023 dated 26.12.2023 passed by the first respondent and quash the same.

Prayer in W.P.No.7059 of 2024: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the entire records relating to the order in Appeal No.AP/GST/499/2023 dated 28.12.2023 passed by the first respondent and quash the same.

Appearance in all W.P's

For Petitioner : Mr.T.Ramesh

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

COMMON ORDER

Since the issue involved and the relief sought in all these Writ Petitions are identical in nature, the same were heard together and are disposed of vide this common order.

2. Challenging the impugned orders dated 26.12.2023/28.12.2023

passed by the first respondent, dismissing the appeal preferred by the petitioner against the orders passed by the Assistant Commissioner, Anuparpalayam Circle, Tiruppur, dated 27.06.2023 pertaining to five assessment years 2017-2018, 2018-2019, 2019-2020, 2020-2021 and 2021-2022, the petitioner has filed the present Writ Petitions.

3. The learned counsel for the petitioner would submit that the petitioner, viz., Tvl.SK Knit Apparels is a partnership firm and they have received the GST registration certificate on 07.07.2017 for carrying out the business of flax, flax tow, Woven Fabrics of Flax, Bags etc., at the following premises No.110A, Sangarammal Thottam Saminathapuram, Anuparpalayam Post, Tiruppur, Tamil Nadu 641 652. He would further submit that the petitioner has not received any show cause notice and no reply was filed by the petitioner. However, the second respondent/Assistant Commissioner had passed assessment orders dated 27.06.2023 respectively for the following assessment years 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, without providing an opportunity of personal hearing to the petitioner, resulting in violation of principles of natural justice. Therefore, the petitioner has preferred appeals before the Appellate Authority/first respondent herein on 23.09.2023. However, the Appellate Authority has passed final orders on

26.12.2023/28.12.2023, dismissing the appeals. Aggrieved by the said orders passed by the first respondent, the petitioner has filed the present Writ Petition.

3.1. The main contention of the learned counsel for the petitioner is that by way of tampering the petitioner's common portal e-mail ID by some third party, the Code has been changed and they have carried on the business by using the petitioner's GST registration and they have also filed returns. Subsequently, the petitioner came to know about the assessment orders on 15.09.2023 from the Office of the second respondent that five assessment orders came to be passed by the second respondent on 27.06.2023, imposing penalty under Section 122(1)(ii) and Section 122(1)(vii) of the TNGST Act & CGST Act. Immediately, after coming to know about the assessment orders dated 27.06.2023 that were passed by the second respondent without giving an opportunity to the petitioner in violation of principles of natural justice, the petitioner has preferred appeals before the first respondent/appellate authority on 23.09.2023, however, the said appeals have been dismissed by the first respondent, without considering the aspect of violation of principles of natural justice. Hence, the learned counsel would submit that the impugned orders passed by the first respondent are liable to be set-aside and the matters may be remanded to the Authority concerned for re-consideration.

4. Per contra, Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) appearing for the respondents would submit that there was a huge business transactions based on bill trading activities, had taken place to an extent of about Two hundred and fifty crores (Rs.250 crores) in respect of the five assessment years viz., 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, and the tax liability would come around to a sum of Rs.28 Crores. Further, he would submit that no registered dealer will keep their registration without doing any business transaction. The GST registration was obtained in the year of 2017, even from the first year upto five years, the dealer kept his registration as pending, and if they had not carried on business, they are supposed to surrender the GST registration. Without doing so, the learned counsel for the petitioner argued that they had no business transactions from the date of registration, in which case, the petitioner ought to have surrendered the GST registration. Even assuming that they intend to carry on the business activities in future, it is incumbent on the part of the dealers to file the "Nil returns" periodically. However, in the present case, nothing has been done by the petitioner but huge turn-over was done and all are bill trading activities. He would further submit that the petitioner themselves have made all arrangements and they have pleaded before this Court as if they were not aware of the

information contained in the portal since their e-mail was hacked by some third party. Even assuming, that their e-mail is hacked, the petitioner ought to have lodged a police complaint immediately. However, the petitioner leisurely filed a police complaint on 28.12.2023 that too after the impugned orders passed by the first respondent on 26.12.2023 & 28.12.2023. Therefore, the learned Additional Government Pleader would submit that there is no bona fide on the part of the petitioner and the petitioner was very well aware of all the facts and moreover, the petitioner has failed to prove that the orders passed by the second respondent in violation of principles of natural justice. The petitioner has to produce all the records before the Appellate Authority, however, they failed to do so. Under these circumstances only, the Appellate Authority/first respondent has rightly confirmed the orders passed by the Assessing Officer/second respondent. Since the petitioner-firm has conducted bill trading activities and failed to file any documents before the Authority concerned. Hence, he submitted that there is no bona fide on the part of the petitioner and prayed for dismissal of these Writ Petitions.

5. I have given my due consideration to the submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondents and perused the materials available on record.

6. In the case on hand, the petitioner had obtained the GST Registration on 07.07.2017. According to the petitioner, the petitioner's GST Log-in was tampered by some third party, whereby, their code was changed and thereafter, the said third party had carried on their business by using the petitioner's GST Registration number from the financial year 2017-2018 to 2021-2022. In such case, this Court is of the view that if the petitioner had taken steps to file the "Nil" returns as contemplated under Section 39(8) of the Act, the aforesaid tampering would have come to the knowledge of the petitioner. However, the petitioner herein had not taken any steps to file the "Nil" returns in terms of Section 39(8) of the Act, which reads as follows:

> "(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period. "

7. A perusal of the above would make it clear that even if there was no transaction, the Assessee is required to file "Nil" returns for every month during the existence of GST Registration. According to the petitioner, there was no transaction from the FY 2017-2018 to 2021-2022 and admittedly, they had not

taken any steps to file their “Nil” returns. Therefore, the entire episode would show the ultimate chances of the petitioner's involvement in the alleged tampering of records, so as to do their business using fake invoices and thereby, avail the input tax credit illegally.

8. Even assuming the petitioner's contention is true that somebody has tampered the petitioner's e-mail ID, the petitioner ought to have attempted to comply with Section 39(8) of the Act, by which, all the fraud would have come to the light, even at the very first month itself. But no such steps has been taken by the petitioner. Therefore, as rightly submitted by the learned Additional Government Pleader (Taxes), that there is no bona fide on the part of the petitioner. It appears that the petitioner has deliberately not made any attempt to comply with Section 39(8) of the Act and the entire so-called business transactions had taken place only with the connivance of the petitioner. The petitioner has not taken any steps to file the “Nil returns” and slept over the issue for the long five years. Under these circumstances only, the second respondent/Assessing Officer passed ex-parte assessment orders dated 27.06.2023 for the five assessment years. Although the petitioner contended that no opportunity was provided before passing the assessment orders, but they were well aware of all these facts and as against the assessment orders, they

have preferred the appeals before the Appellate Authority, only to avail the opportunity, which was lost before the second respondent.

9. The petitioner is well aware of the fact that the Appellate Authority has no power to remand the matter entirety. On the ground that the assessment orders were passed in violation of principles of natural justice, the petitioner has preferred appeals before the Appellate Authority, but the petitioner had an opportunity of personal hearing to establish its case. Therefore, the question of violation of principles of natural justice does not arise in the present case. It is seen from the records that the petitioner had lost the personal hearing opportunity before the second respondent/Assessing Officer and they themselves invited to avail the opportunities before the Appellate Authority, in which case, they have to establish its case by providing the documents. However, the petitioner failed to do so. In the present case, when the petitioner came to know about the fraudulent activities done by some third party, they have received a call on 15.09.2023 from the office of the second respondent with regard to the assessment orders. However, they have not filed any police complaint, but they preferred appeals on 23.09.2023, and the impugned order was passed by the first respondent on 26.12.2023. Thereafter, the petitioner leisurely filed a police complaint on 28.12.2023, which clearly shows that the

petitioner was not bothered about giving the police complaint, but made an attempt to get a favourable orders from the Authority concerned. Since they have not obtained any favourable orders, they preferred to lodge a police complaint to show as if they are serious in the present issue. It is very clear that the petitioner was not so serious to contest the matter and not taking any action against the third party. The entire scenario would clearly indicates that it is bill trading activities and thereby to make the loss to the State. Further, the Bill Trading activities have also been clearly proved when the certificate issued by the Village Administrative Officer, wherein it is stated that address declared in the GST registration by the petitioner is non-existent and there is no such place of business/no such address and no such business is functioning in the name and style of Tvl. S.K.Knit Apparels. All these aspects ultimately proved that this is nothing but a Bill trading activities, for which, the second respondent proceeded with the penalty proceedings. The first respondent has provided all the opportunities to the petitioner to present their case before the Appellate Authority, but the petitioner has lost his second opportunity before the Appellate Authority also. Under these circumstances, the petitioner cannot plead before this Court that the assessment orders have been passed in violation of principles of natural justice.

10. Therefore, considering all these circumstances, this Court does not find any merit in these Writ Petitions filed by the petitioner. Had they not been involved in the bill trading activities, they would have complied with Section 39(8) of the Act. However, the petitioner has not taken any steps.

11. If the petitioner is a genuine concern and their version is true that the third party has tampered their e-mail Id, had the petitioner taken steps to file the "Nil returns" every month without fail, all these frauds, would come to light. Now the petitioner is pleading before this Court, as if he is not aware of anything having allowed the alleged fraudsters to tamper their e-mail ID and transact in the GST account of the petitioner.

12. Similarly, immediately after knowing the alleged fraud, it is incumbent on the part of the petitioner to take appropriate steps against the fraudulent person in order to prevent fraudulent activities. However, on the contrary, no such steps were taken and no returns in compliance of Section 39(8) of the Act, were filed by the petitioner, which ultimately proved that due to deliberate action of the petitioner, the entire business transactions had taken place. In such view of the matter, this Court is not inclined to entertain these Writ Petitions and the same are liable to be dismissed.

13. In the result, these Writ Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

09.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,
jd

To
1. Deputy Commissioner (ST)-GST Appeal,
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