IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8644 of 2022

M/s.Saravana Selvarathinam Retail Private Limited,
Represented by its Managing Director
S.Saravana Arul ... Petitioner

Vs.

1.The Commissioner of Central Taxes (CGST),
South Commissionerate,
692, Anna Salai,
Nandanam, Chennai – 600 035.

2.The Assistant Commissioner (CT),
Nandanam Circle,
Taluk Office Building,
Greenways Road,
Chennai – 600 028.
(2nd respondent *suo motu* impleaded vide
Order of this Court dated 07.11.2024 in
W.P.No.8644 of 2022) ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent

a) to refund the sum of Rs.15,49,01,792/- (Rupees Fifteen Crores Forty Nine Lakhs One Thousand Seven Hundred and Ninety Two only) recovered from the petitioner without authority of law;
b) to return the machinaries and equipments such as computers and servers seized from the shop of the petitioner on 28.01.2022 and various documents including original property documents;
c) not to harass the employees of the petitioner in the name of investigation

inasmuch as the petitioner has been co-operating with the respondent;

d) to complete the investigation in a time bound manner and issue proper show cause notice under Section 73 or 74 of the Act, within the time frame fixed by this Court.

For Petitioner	:	Mr.G.Karthikeyan Senior Counsel for Mrs.A.Jagadeeswari
For Respondent	:	Mr.R.P.Pragadish Senior Standing Counsel

ORDER

The petitioner is before this Court for a direction to refund a sum of Rs.15,49,01,792/- recovered from the petitioner during March 2022.

2. It appears that the petitioner had initially paid a sum of Rs.11,00,00,000/- on 10.03.2022 in cash by making debit from the petitioner's Electronic Credit Register. Thereafter, the petitioner was threatened with arrest and therefore the petitioner rushed to the Magistrate's Court for bail. During the course of investigation, the petitioner was arrested and remanded to judicial custody. Under these circumstances, the petitioner also moved an application for bail before the concerned Magistrate's Court. Thereafter, the petitioner has made few other payments. In all, the petitioner has thus deposited a sum of Rs.15,49,01,792/-.

3. It is the specific case of the petitioner that the petitioner was arrested

by the State authority under authorization from the Commissioner of Central Taxes (CGST) and therefore the 1st respondent who is the central authority have no jurisdiction to investigate or to issue Show Cause Notice.

4. On the other hand, the learned Senior Standing Counsel for the respondent would submit that there has been large scale evasion of tax and that the petitioner is liable to be punished under Section 132 of the CGST Act, 2017.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

6. The 1st respondent cannot retain the aforesaid amount without appropriation of the same in accordance with law. To appropriate the amount collected from the petitioner, the 1st respondent ought to have issued a Show Cause Notice.

7. The petitioner has made only the 1st respondent as a party to the proceedings although the petitioner was arrested by the State authority.

8. Although this Court had taken a view that the central excise authorities as a counterparts, have no authority to investigate or issue the Show Cause Notice under the provisions of the respective GST enactments.

9. Be that as it may, the Assistant Commissioner (CT), Nandanam Circle, Taluk Office Building, Greenways Road, Chennai – 600 028 is also impleaded *suo motu* as the 2nd respondent.

10. The 1st respondent is directed to co-operate with the 2nd respondent and who shall issue proper Show Cause Notice to the petitioner under Section 73, 74 of the respective GST enactments to demand tax that had been purportedly evaded by the petitioner.

11. This exercise shall be completed by the respondents within a period of 3 months from the date of receipt of a copy of this order.

12. The petitioner shall thereafter file a detailed reply and it is expected that final orders will be passed within a period of 3 months thereafter on merits and in accordance with law or subject to the limitations under the respective GST enactments.

13. Needless to state, the petitioner can take all the legal defences that are available in law.

14. In case the demand is dropped, the amount shall be refunded back to the petitioner.

15. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petition is closed.

07.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

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To

The Commissioner of Central Taxes (CGST),
South Commissionerate,

692, Anna Salai,
Nandanam, Chennai – 600 035.

W.P.No.8644 of 2022

07.11.2024