



WEB COPY



W.P.No.12349 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.12349 of 2023

M/s.Zest Buildtek Promoters,
27, 1st Floor, 10th Avenue,
Ashok Nagar, Chennai 600 083
Represented by its Partner
Mr.V. Shanmugaprabhu

... Petitioner

VS

1. The Deputy Commissioner of GST & Central Excise
T.Nagar Division, Chennai GST South Commissionerate
692, MHU Complex, Nandanam
Chennai-600 035.

2. The Joint Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise
Chennai South GST Commissionerate
692, MHU Complex, Nandanam
Chennai-600 035.

3. The Branch Manager,
State Bank of India,
Jafferkhanpet, Chennai-600 083.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the documents connected with order C.No.V/ST/15/41/2021 JC dated 16.02.2023 form Appendix IIIC passed by the 1st respondent herein



W.P.No.12349 of 2023

prohibiting and restraining the petitioner from selling or transferring of charging the residential property specified in the said order belonging to the partner of the petitioner firm pursuant to the tax demand of Rs.79,09,965/- said to have been confirmed against the petitioner herein by the 2nd respondent herein and to quash the same for having been passed prematurely without service of the tax demand on the petitioner herein in the manner known to law and also to direct the 1st respondent to forthwith defreeze the Petitioner's bank account bearing no.32960412108 maintained with the State Bank of India Jhaferkhanpet Branch towards the said tax arrears and consequently direct the 2nd respondent herein to serve the certified copy of the Order confirming the tax demand of Rs.79,09,965/- on the petitioner as requested by the petitioner herein in their letters dated 19.12.2022 and 07.03.2023.

For Petitioner : Mr.Vijay Narayan, Senior Advocate,
for Mr.N.Viswanathan

For Respondents : Mr.Umesh Rao K,
Senior Standing Counsel for R1&R2

ORDER

The petitioner challenges an order dated 16.02.2023 attaching the property of the partnership firm in respect of a tax demand of Rs.79,09,965/- and also seeks a direction to the 2nd respondent to provide a certified copy of the order confirming the tax demand.



W.P.No.12349 of 2023

2. The petitioner is a partnership firm engaged in the business of construction of residential properties on joint venture basis. The said firm was registered under the Finance Act, 1994 as a registered person. Upon receipt of a show cause notice dated 15.07.2020, the petitioner issued a letter dated 24.03.2021 requesting for a postponement of the scheduled hearing. Thereafter, a detailed reply was issued by the petitioner, through its counsel, on 18.08.2021. According to the petitioner, no order was communicated by the first and second respondents after the above mentioned reply was issued.

3. Upon receiving a call from the recovery section of the Goods and Services Tax Department, it is stated that the petitioner wrote to the first and second respondents on 29.11.2022 and informed them of the shifting of the registered office of the petitioner from the original address to No.27, 1st Floor, 10th Avenue, Ashok Nagar, Chennai 600 083. The petitioner also requested for a certified copy of the assessment order issued against the firm. A further communication in this regard was issued on 19.12.2022. A little later, the impugned attachment order was received by the petitioner. The present writ

<https://www.mhc.tn.gov.in/> petition was filed in the above facts and circumstances.



W.P.No.12349 of 2023

4. Learned senior counsel for the petitioner invited my attention

to the communication of 24.03.2021 to point out that the said communication was issued on the letterhead of the partnership firm bearing its registered office address and that such address is No.27, First Floor, 10th Avenue, Ashok Nagar, Chennai 600 083. He also referred to the subsequent communications of 29.11.2022 and 19.12.2022 whereby the first and second respondents were expressly informed that the registered office was shifted to the above mentioned address. With reference to the assessment order dated 09.11.2021, learned senior counsel submits that the said order was not received by the petitioner and that the first and second respondents refused to provide a copy of such order when a request was made both on 29.11.2022 and 19.12.2022.

5. By relying upon the judgment of the Hon'ble Supreme Court in *Saral Wire Craft Pvt. Ltd. v. Commissioner of Customs, Central Excise and Service Tax*, 2015 (322) E.L.T. 192 (S.C.), particularly paragraphs 9 and 10 thereof, learned senior counsel submitted that the Hon'ble Supreme Court recognized the importance of proper notice and held that unless such notice is served on the person concerned or its



W.P.No.12349 of 2023

authorized agent, it does not constitute valid service. He also relied upon the judgment of a Division Bench of *Allahabad High Court in V3 International v. Commissioner of Customs (Appeal)*, 2018 (362) E.L.T. 402 (All.), particularly paragraph 7 thereof, with regard to rebuttal of the presumption of service. On the facts of this case, learned senior counsel submitted that the presumption raised by the delivery manifest of the Department of Posts stands rebutted by the documents placed on record with regard to the shifting of the registered office and the repeated requests for a certified copy of the order.

6. Learned senior counsel further submits that the petitioner has already remitted about Rs.5 lakhs and that this amount is more than the remittance required as a pre-condition for presenting a statutory appeal. By taking into account the fact that the petitioner did not receive a copy of the order in original until the same was filed on or about 18.12.2023 by learned senior standing counsel for the first and second respondents, it is submitted that the petitioner be permitted to present and prosecute a statutory appeal.



W.P.No.12349 of 2023

7. In response to these submissions, learned senior standing counsel for the first and second respondents raises a preliminary objection. He contends that a partnership firm is not entitled to file a writ petition on behalf of the partners of such firm. He submits that all the partners should join hands and file the writ petition and that the present writ petition is liable to be dismissed on the basis of this preliminary objection. In order to substantiate this contention, he relied upon the judgment of the Division Bench of the Allahabad High Court in *Agarwal Stone Mill v. U.P.State Electricity Board and Others*, Manu/UP/0067/1993. He also relied on the judgment of the Hon'ble Supreme Court in *State of Punjab v. Jullunder Vegetables Syndicate*, Manu/SC/0296/1965.

8. With regard to the validity of the impugned order, learned counsel submitted that the said order is sustainable as per the Board's Master Circular on Recovery and Write-off of Arrears of Revenue, Circular No.1081/02/2022-CX dated 19.01.2022 (Circular No.1081), whereby proceedings may be initiated either under the Central Excise Act or the Customs Act or the Finance Act. Without prejudice,

he submits that Section 142(1)(ii) of the Customs Act, 1962 (The



W.P.No.12349 of 2023

Customs Act) is in pari materia with the Central Goods and Services Tax Act, 2017 (the CGST Act) , particularly Section 142(8)(a) read with Section 174(2)(e) thereof. Since these provisions are in substance not different from Section 142(1)(ii) of the Customs Act, learned senior standing counsel submits that the impugned attachment order contains no infirmity.

9. As regards the service of the assessment order, learned senior standing counsel points out that the order was served on the new registered office address of the petitioner. Consequently, he submits that a presumption is raised with regard to service of notice under the General Clauses Act. He also submits that the assessment order indicates that the petitioner's reply was taken into consideration, and that, therefore, no case is made out to interfere either with the assessment order or the order of attachment.

10. In light of these contentions, the preliminary objection raised by the petitioner falls for consideration first. Learned senior standing counsel contended that a partnership firm is not a legal person unlike a limited company or a limited liability partnership.



This contention is unexceptionable in a non-tax context. However, in the context of tax statutes in India, the expression 'person' has been defined. In the specific context of the Finance Act, 1994, the expression 'person' is defined in Section 65 B (37) as under:

“(37) “person” includes, --
(i) an individual,
(ii) A Hindu undivided family,
(iii) a company,
(iv) a society
(v) a limited liability partnership,
(vi) a firm,
(vii) an association of person or body of
individuals, whether incorporated or not,
(viii) Government,
(ix) a local authority, or
(x) every artificial juridical person, not falling
with any of the preceding sub-clauses;”

Similar provisions are also contained in other tax statutes such as the Income-tax Act, 1961. In fact, the judgments relied upon by learned senior standing counsel also draw reference to this distinction between 'person' in tax and non-tax contexts. For instance, in paragraphs 17 and 18 of the Division Bench of the judgment of the



W.P.No.12349 of 2023

Allahabad High Court in *Agarwal Stone Mill*, the Allahabad High

Court set out the definition of person in Section 2(32) of the Income-tax Act and concluded that a firm under the Income-tax Act is a separate and distinct legal entity chargeable to Income Tax. Likewise, in paragraph 15 of the *State of Punjab v. Jullunder Vegetables Syndicate*, the Hon'ble Supreme Court held that a firm is a legal entity both under income-tax and sales-tax law. Thus, for purposes of service tax law, the petitioner, which is a partnership firm, is the assessee and, therefore, the person aggrieved by the order of attachment. For such reason, the preliminary objection is overruled.

11. The next question that falls for consideration is whether the impugned attachment order is valid. To decide this question, it is necessary to examine the said order closely. The said order was issued under Section 142(1)(c)(ii) of the Customs Act, 1962 read with the Customs Attachment of Property of Defaulters for Recovery of Government Dues) Rules, 1995. The order was issued on 16.02.2023. By that time, the Finance Act, 1994 and, in particular, Chapter V thereof pertaining to service tax stood repealed and replaced by the enactments constituting GST law, such as the CGST Act. The said



W.P.No.12349 of 2023

enactment contains a repeal clause under Section 174 thereof, which saves proceedings initiated under legislations that were repealed by the CGST Act. As regards taxes which had not been recovered, it enables initiation of action for recovery thereof under Section 142 of the CGST Act. Therefore, it was open to the first and second respondents to initiate action under the CGST Act if tax dues had not been recovered under the provisions of the Finance Act 1994. Instead, the petitioner resorted to Section 142 of the Customs Act. Section 142(1) of the Customs Act is as under:

“142. Recovery of sums due to Government. –

(1) [Where any sum payable by any person] under this Act [including the amount required to be paid to the credit of the Central Government under section 28B] is not paid, –

(a) the proper officer may deduct or may require any other officer of customs to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other officer of customs; or

(b) the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may recover or may require any other officer of customs to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] or such other officer of customs; or



WEB COPY



W.P.No.12349 of 2023

- (c) *if the amount cannot be recovered from such person in the manner provided in clause (a) or clause (b) –*
- (i) *the [Assistant Commissioner of Customs or Deputy Commissioner of Customs] may prepare a certificate signed by him specifying the amount due from such person and send it to the [Commissioner] of the district in which such person owns any property or resides or carries on his business and the said [Commissioner] on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue; or*
 - ii) *the proper officer may, on an authorisation by a [Principal Commissioner of Customs or Commissioner of Customs] and in accordance with the rules made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus, if any, to such person: [PROVIDED that where the person (hereinafter referred to as predecessor), by whom any sum payable under this*



WEB COPY



W.P.No.12349 of 2023

Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the [Principal Commissioner of Customs or Commissioner of Customs], for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.]

- [(d) (i) the proper officer may, by a notice in writing, require any other person from whom money is due to such person or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central Government either forthwith upon the money becoming due or being held, or at or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;*
- (ii) every person to whom the notice is issued under this section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any*



WEB COPY



W.P.No.12349 of 2023

entry, endorsement or the like being made before the payment is made, notwithstanding any rule, practice or requirement to the contrary;

(iii) in case the person to whom a notice under this section has been issued, fails to make the payment in pursuance thereof to the Central Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Chapter shall follow.] “

Section 142(1) makes it abundantly clear that the said provision can be invoked only when a sum of money which is payable by any person under the Customs Act remains unpaid. For such reason, the impugned attachment order is unsustainable and is hereby quashed.

12. Turning to the assessment order, learned senior standing counsel relied heavily on the acknowledgment, which appears to indicate that the communication was received on behalf of the petitioner. The acknowledgment bears the rubber stamp of the firm. As against this, learned senior counsel for the petitioner pointed out that the petitioner had engaged the services of a lawyer and issued a detailed reply. Since the petitioner had not received any order pursuant to the reply dated 18.08.2021, he pointed out that the petitioner sent communications to the first and second respondents requesting for copies of the order and pointing out that the



W.P.No.12349 of 2023

registered office had been shifted. Admittedly, these communications were not replied to although such communications were received as indicated by the rubber stamp on the respective letters. The requested certified copy was also not provided to the petitioner. Eventually, according to the petitioner, the copy of the order was received only on 18.12.2023 when the order was enclosed in the typed set filed by the learned senior standing counsel. Learned senior standing counsel, however, points out that a copy of the order was served earlier when the writ petition was moved.

13. In the writ petition, the petitioner assailed only the attachment order and prayed that a certified copy of the assessment order be provided. Thus, irrespective of the exact date of receipt of a copy of the assessment order, it appears that the petitioner did not have a copy of the assessment order when the writ petition was filed. The writ petition was filed in March, 2023 and was pending until today. During such period, in view of the relief claimed, it would have been inappropriate for the petitioner to assail the assessment order in parallel proceedings without the leave of this Court. In these circumstances, the interest of justice warrants that the petitioner be



W.P.No.12349 of 2023

provided an opportunity to assail the assessment order. Since the consideration of a challenge to the assessment order would entail an examination of disputed questions of fact, it is more appropriate that the same be undertaken in a statutory appeal.

14. For reasons set out above, this writ petition is disposed of with the following directions:

(i) the impugned attachment order is quashed by leaving it open to the first and second respondents to initiate appropriate proceedings in accordance with the CGST Act for the recovery of service tax dues.

(ii) The petitioner is permitted to present a statutory appeal before the appellate authority provided such appeal is presented within a maximum period of two weeks from the date of receipt of a copy of this order.

(iii) If filed within such time, such statutory appeal shall be received and disposed of on merits by



WEB COPY



W.P.No.12349 of 2023

the appellate authority, without going into the question of limitation., upon being satisfied that the petitioner has remitted the requisite pre-deposit.

(iv) So as to protect the interest of revenue, notwithstanding the quashing of the attachment order, the petitioner is directed not to alienate, encumber or otherwise dispose of the immovable asset, which was subject to attachment, without the leave of the appellate authority. There shall be no order as to costs.

19.02.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

kal



W.P.No.12349 of 2023

To
WEB COPY

1. The Deputy Commissioner of GST & Central Excise,
T.Nagar Division, Chennai GST South Commissionerate,
692, MHU Complex, Nandanam,
Chennai-600 035.
2. The Joint Commissioner of GST & Central Excise,
Office of the Commissioner of GST & Central Excise,
Chennai South GST Commissionerate,
692, MHU Complex, Nandanam,
Chennai-600 035.
3. The Branch Manager,
State Bank of India,
Jafferkhanpet,
Chennai-600 083.



WEB COPY



W.P.No.12349 of 2023

SENTHILKUMAR RAMAMOORTHY J.

kal

W.P.No.12349 of 2023

19.02.2024