IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.14070 of 2022
and
W.M.P.No.13309 of 2022

Shri PKP Spintex Mills Private Limited,
Represented by its Managing Director
Mr.P.K.Pounraj ... Petitioner

Vs.

1.The Commissioner,
Office of the Commissioner of GST & Central Excise,
Salem Commissionerate,
1, Foulkes Compound,
Anaimedu, Salem – 636 001.

2.The Assistant Commissioner of GST & Central Excise,
Salem I Division,
Salem Commissionerate,
1, Foulkes Compound,
Anaimedu, Salem – 636 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the proceedings in Order No.1/2022 (Commr.- GST Cell) dated 13.04.2022 on the file of the first respondent and to quash the same as arbitrary and without jurisdiction and to consequently direct the first respondent to accept payment of outstanding GST dues in equated monthly installments after duty adjusting/crediting the input tax credit due to the petitioner.

For Petitioner : No appearance

For Respondents : Mr.T.Ramesh Kutty
Senior Standing Counsel
and
Mr.B.Sivaraman
Junior Standing Counsel

ORDER

There is no representation on behalf of the petitioner.

2. Mr.T.Ramesh Kutty, learned Senior Standing Counsel and Mr.B.Sivaraman, learned Junior Standing Counsel for the respondents are present.

3. In this Writ Petition, the petitioner has challenged the Impugned Order No.1/2022 (Commr-GST Cell) dated 13.04.2022. This was in the background of an Order passed by this Court earlier in W.P.No.733 of 2022 which came to be disposed on 21.01.2022. By an Order dated 13.04.2022, the first respondent has passed the following Order:-

"6. Discussion & findings

6.1. The provisions for making payment of GST in installments are provided under Section 80 of CGST Act, 2017 and the same is reproduced below:-

Payment of tax and other amount in instalments.

80. On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under Section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

6.2. It could be observed from the above section, the facility of making payment of GST on installment basis is applicable only to such cases when the non-payment of Gst is attributed to amount other than the liability self-assessed in any return. The undersigned find from the records that the taxpayer has declared their liability in the GSTR 1 returns filed for the period August 2018 to April 2019.

6.3. In this regard it is pertinent to refer to sub section (12) of the Section 75 of the CGST Act, 2017 read with the Explanation appended to the said sub-section wherein it has been specified that,-

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

[Explanation.- For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]

6.4. In view of the above provision, any liability declared under GSTR 1 return filed under Section 37 but not included in the GSTR 3B return filed in terms of Section 39 is considered as self-assessed tax.

6.5. Further it is appropriate to refer to the decision of the Hon'ble High Court of Madhya Pradesh rendered in the case of Kabeer Reality Private Limited, Indore v/s The Union of India & Others vide order in W.P.No.15645/2019 dated 17.10.2019 wherein it was held that once the liability is declared under GSTR 1 filed under Section 37 but not paid through GSTR 3B return filed under Section 39 that means the taxpayer has already self-assessed the GST liability and the action contemplated under Section 79 can be initiated against the petitioner without taking recourse to the Section 73 of Section 74 of the CGST Act, 2017.

6.6. In the instant case, as mentioned earlier, the taxpayer has already filed GSTR 1A but not filed any GSTR 3B for the disputed period, that means in view of explanation to Section 75(12) of the CGST Act, 2017 the taxpayer has already self-assessed their GST and therefore facility of making payment of

> GST in installments cannot be entertained and the request of the taxpayer is liable to be rejected in terms of provisions contained under Section 80 of the CGST Act, 2017.
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> 6.7. Regarding the other request of the taxpayer to revoke the suo moto cancelled GST registration, the taxpayer is requested to follow the procedure as enunciated under Section 30 of the CGST Act, 2017 read with Rule 23 of the CGST Rules, 2017.
>
> 7. Conclusion:
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> In view of the above discussion, the requests made by the taxpayer vide their letter 29.12.2021 are rejected."

4. The dispute in this case pertains to the period between August 2018 to January 2019 and February 2019 to April 2019 in respect of which the petitioner had filed returns in GSTR-1 on 10.04.2019 and 02.01.2021 belatedly admitting the tax liability of Rs.1,48,86,997/-. However, the petitioner had failed to file the returns in Form GSTR-3B and not discharged the tax liability.

5. The petitioner had requested time for paying the amounts purportedly in terms of Section 80 of the Central Goods and Services Tax (CGST) Act, 2017.

6. Challenging the Impugned Order dated 13.04.2022, the petitioner is

before this Court.

7. The respondents defend the Impugned Order dated 13.04.2022 stating that the amount due pertains to the period prior to the period when the country was under both continuous and intermittent lock down due to outbreak of Covid-19 pandemic with effect from 24.03.2020. Hence, they are not come to the rescue of the petitioner.

8. That apart, two more years have lapsed, since the Impugned Order was passed. No further amount has been paid by the petitioner for discharging the tax liability of Rs.1,48,86,997/-.

9. Having perused the affidavit filed in support of this writ petition and the counter affidavit filed by the respondents, I find no infirmity in the Impugned Order as there is no scope for exercising discretion by extending the period for payment of tax particularly when there was self-assessment made by filing the returns in form GSTR-1. The petitioner ought to have also filed form GSTR-3B and paid the tax.

10. Even otherwise more than two years have lapsed since the Impugned Order dated 13.04.2022 was passed. Therefore, the petitioner could have paid the amount during the pendency of the present writ petition.

11. Therefore, no further relief can be granted to the petitioner. The pendency of the writ petition itself would have been a temporary relief to the petitioner before this Court.

12. Under these circumstances, this Writ Petition is liable to be dismissed. It is accordingly dismissed. However, while dismissing this Writ Petition liberty is given to the petitioner to pay the amount together with interest and thereafter request the respondents either to revive the registration or to give fresh registration. No costs. Connected Writ Miscellaneous Petition is closed.

08.11.2024

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

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