IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED**: 16.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17194 of 2024

Tvl. Balaiah Venkatesh,
53/2, Ground Floor, Kamaraj Street,
Sathy Athani Main Road, D.G.Pudur
Gobichettipalayam Taluk,
Erode, Tamil Nadu – 638 503. ... Petitioner

-vs-

The State Tax Officer (Circle),
Sathyamangalam, Erode,
Tamil Nadu. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus, directing the respondent herein to restore the sum of Rs.10,65,000/-, as prayed for by the petitioner's in their application dated 29.05.2024.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

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ORDER

By this writ petition, the petitioner seeks a direction to the respondent to restore the sum of Rs.10,65,000/-, which was recovered from the petitioner's bank account pursuant to order in original dated 03.04.2024. Upon issuance of the above mentioned order in original, the petitioner presented a statutory appeal on 21.05.2024, which is within the prescribed limitation period of three months. Meanwhile, bank attachment notice dated 14.05.2024 was issued by the respondent herein. Pursuant thereto, a sum of Rs.10,65,000/- was debited from the petitioner's account in the Federal Bank on 22.05.2024. After submitting application dated 28.05.2024 for refund of such amount, the present writ petition was filed.

2. Learned counsel for the petitioner submits that, in due course, recovery is permissible in terms of Section 79 of applicable GST statutes only upon expiry of the three month period within which the tax payer is entitled to lodge a statutory appeal. As an exception, if recovery is necessary in view of revenue threat, recovery action may be taken under the proviso to Section 78 of applicable GST enactments by the jurisdictional Principal Commissioner / Commissioner of Central Tax. By referring to Instruction No.1/2024 – GST dated 30.05.2024, which was issued by the Central Board of Indirect Taxes and Customs (CBIC), he submits that clear instructions were issued with regard to the manner of initiation of recovery proceedings under Sections 78 and 79. Learned counsel contends that the statutory prescription was contravened in this case.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader,

accepts notice for the respondents. He submits that the petitioner's GST registration was cancelled and, therefore, recovery measures were initiated even prior to the expiry of the three month time limit.

4. Section 78 is as under:

> *"78. Initiation of recovery proceedings*
> *Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:*
> *PROVIDED that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."*

5. The proviso to Section 78 prescribes that the proper officer may initiate recovery proceedings before expiry of three months if it is expedient in the interest of revenue for reasons to be recorded in writing. Learned Additional Government Pleader has been unable to

place on record any decision in accordance with the proviso to Section 78 along with reasons for such decision. In this connection, it is pertinent to notice that jurisdiction has been conferred on the jurisdictional Principal Commissioner / Commissioner as regards CGST. The recovery action, in this case, was taken by the State Tax Officer. For both these reasons, the recovery measure is unsustainable.

6. In these circumstances, W.P.No.17194 of 2024 is disposed of by directing the respondent to refund the sum of Rs.10,65,000/- by considering the petitioner's application dated 28.05.2024 and disposing of the same within ***three months*** from the date of receipt of a copy of this order. No costs.

16.07.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The State Tax Officer (Circle),
Sathyamangalam, Erode, Tamil Nadu.

SENTHILKUMAR RAMAMOORTHY,J

rna

W.P.No.17194 of 2024

16.07.2024