IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.29283 of 2022
and
W.M.P.No.28577 of 2022

SNR Trans
Represented by its Proprietor,
Mr.Narayanamurthy Suriyanarayanan,
No.01 Buddu Street,
Chennai – 600 001. ... Petitioner

Vs

1.The Deputy State Tax Officer of Goods and Services,
Mannady Assessment Circle,
No.32, Integrated Commercial Tax Office Complex,
Elephant Gate Bridge Road,
Chennai – 600 003.

2.The Assistant Branch Manager,
IDBI Bank,
Parrys Branch (907),
Chennai – 600 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent No.2 made in his intimation e-mail dated 31.10.2022, and quash the same as the same is contrary to law and high handed act on the part of the respondent No.1.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.TNC Kaushik
Additional Government Pleader
for R1

ORDER

In this writ petition, the petitioner has challenged the impugned communication proposing to take coercive action against the petitioner pursuant to the assessment orders for the Assessment Years 2017-2018 to 2020 to 2021.

2. The learned counsel for the petitioner submits that the petitioner has also filed a statutory appeal before the Appellate Commissioner under Section 107 of the GST Act. He would further submit that issue has now

been addressed by the Act 15 of 2024, wherein, Section 128A has been introduced vide Section 146 of the Finance Act. It reads as under:-

> *"Section 146:-After Section 128 of the Central Goods and Services Tax Act, the following Section shall be inserted, namely:-*
>
> *"128A.(1) Notwithstanding anything to the contrary contained in this Act, where any amount of tax is payable by a person chargeable with tax in accordance with,-*
>
> *(a) a notice issued under sub-section (1) of section 73 or a statement issued under sub-section (3) of section 73, and where no order under sub-section (9) of section 73 has been issued; or*
>
> *(b) an order passed under sub-section (9) of section 73, where no order under sub-section (11) of section 107 or sub-section (1) of section 108 has been passed; or*
>
> *(c) an order passed under sub-section (11) of section 107 or sub-section (1) of section 108, and where no order under sub-section (1) of section 113 has been passed,*
>
> *pertaining to the period from 1st July, 2017 to 31st March, 2020, or a part thereof, and the said person pays the full amount of tax payable as per the notice or statement or the order referred to in clause (a), clause (b) or clause (c), as the case may be, on or before the date, as may be notified by the Government on the recommendations of the Council, no interest under Section 50 and penalty under this Act, shall be payable and all the proceedings in respect of the said notice or order or statement, as the case may be, shall be deemed to be concluded, subject to such conditions as may be prescribed:*

Provided that where a notice has been issued under sub-section (1) of section 74, and an order is passed or required to be passed by the proper officer in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court in accordance with the provisions of sub-section (2) of section 75, the said notice or order shall be considered to be a notice or order, as the case may be, referred to in clause (a) or clause (b) of this sub-section:

Provided further that the conclusion of the proceedings under this sub-section, in cases where an application is filed under sub-section (3) of section 107 or under sub-section (3) of section 112 or an appeal is filed by an officer of central tax under sub-section (1) of section 117 or under sub-section (1) of section 118 or where any proceedings are initiated under sub-section (1) of section 108, against an order referred to in clause (b) or clause (c) or against the directions of the Appellate Authority or the Appellate Tribunal or the court referred to in the first proviso, shall be subject to the condition that the said person pays the additional amount of tax payable, if any, in accordance with the order of the Appellate Authority or the Appellate Tribunal or the court or the Revisional Authority, as the case may be, within three months from the date of the said order:

Provided also that where such interest and penalty has already been paid, no refund of the same shall be available.

(2) Nothing contained in sub-section (1) shall be applicable in respect of any amount payable by the person on account of erroneous refund.

(3) Nothing contained in sub-section (1) shall be applicable in respect of cases where an appeal or writ petition filed by the said person is pending before Appellate Authority or Appellate Tribunal or a court, as the case may be, and has not been withdrawn by the said

person on or before the date notified under sub-section (1).

(4) Notwithstanding anything contained in this Act, where any amount specified under sub-section (1) has been paid and the proceedings are deemed to be concluded under the said sub-section, no appeal under sub-section (1) of section 107 or sub-section (1) of section 112 shall lie against an order referred to in clause (b) or clause (c) of sub-section (1), as the case may be."

3. Thus, under Section 128A stands inserted into CGST Act, 2017. It seems to give reprieve to assessees who are in arrears of tax who have filed appeal. The amendment would have bearing on the recovery proceedings to be initiated pursuant to the above assessment order. Under these circumstances, the impugned recovery notices stands quashed and the case stands remitted back to await for further orders in the appeal filed by the petitioner against the respective assessment orders and in accordance with Section 128A of CGST Act, 2017. All further recovery proceedings shall be pursuant to the disposal of the appeal, pending before the Appellate Commissioner or in accordance of dispensation under Section 128A of the CGST Act, 2017.

4. This writ petition stands disposed of with the above observations. No costs. Consequently, connected writ miscellaneous petition is closed.

03.09.2024

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

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C.SARAVANAN, J.

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