BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.5815 & 5816 of 2024
and
W.M.P.(MD) Nos.5494 to 5496 & 5498 of 2024

Gnanaprakasam Singaraj
Proprietor Tvl. Michaelraj Textiles
2/146-H, Puthur Road
Nallamangalam Virudhunagar
Tamil Nadu – 626 111 ... Petitioner in both W.Ps

/vs./

The Assistant Commissioner [ST]
Rajapalayam I Asst. Circle
Commercial Tax Department
Sivakasi, Tamil Nadu – 626 117. ... Respondent in both W.Ps

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records connected with the impugned Order-in-Original No.GSTIN/33ATXPS1177J1ZZ/20-21 and No.GSTIN/33ATXPS1177J1ZZ/21-22, respectively, dated 19.09.2023 passed by the respondent herein, and to quash the same for having been passed in gross violation to the principles of natural justice and contrary to the provisions contained in the GST Acts and thereby committing gross judicial impropriety and to pass such order.

For Petitioner in both W.Ps : Mr.N.Viswanathan

For Respondent in both W.Ps : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

The petitioner has filed these writ petitions for a Certiorari, to call for the records connected with the impugned Order-in-Original No.GSTIN/33ATXPS1177J1ZZ/20-21 and No.GSTIN/33ATXPS1177J1ZZ/21-22, respectively, dated 19.09.2023 passed by the respondent herein, and to quash the same for having been passed in gross violation to the principles of natural justice and contrary to the provisions contained in the GST Acts and thereby committing gross judicial impropriety.

2. This petitioner has challenged the assessment orders passed for the year 2020-21 and 2021-22 on 19.09.2023. The specific plea of the petitioner is that the petitioner is assessed to the Central Authorities and therefore, that has to be assessed by the Central Authority. However, the State Authority interfered with

the proceedings of the petitioner and issued notice for the Assessment Years 2017-18 to 2021-22.

3. It is submitted that on 05.09.2023, the petitioner appeared and submitted his documents for the first three assessment years i.e., 2017-18 to 2019-20 and requested further time to furnish the documents for these two assessment years i.e., AY 2020-21 and AY 2021-22. However, the respondent has proceeded to pass the impugned order.

4. The learned counsel for the petitioner would submit that as far as the first three assessment years are concerned, the petitioner appeared before the Appellate Authority under Section 107 TNGST Act, 2017 and furnished the documents. As far as the impugned order is concerned, the petitioner submitted that if the petitioner has been given one opportunity, he will furnish the documents and substantiate the demand that was proposed in the show cause notice issued to the petitioner.

5. I have considered the arguments advanced by the learned counsel for the

petitioner and the learned Additional Government Pleader for the respondent.

6. *Prima facie*, this Court, by an order passed in ***Tvl.Varadhan Infraastructure vs. The Special Secretary*** in the batch of cases in the Writ Petitions in W.P.No.34792 of 2019 and etc., batch, on 15.09.2023, has concluded as under:

> "*61. Thus, Section 6(1) of the respective GST Enactments empowers Government to issue notification on the recommendation of GST Council for cross-empowerment. However, no notification has been issued except under Section 6(1) of the respective GST Enactments for the purpose of refund although officers from the Central GST and State GST are proper officers under the respective GST Enactments.*
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> *62. Since, no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax under Chapter-XI of the respective GST Enactments r/w Chapter X of the respective GST Rules, impugned proceedings are to be held without jurisdiction. Consequently, the impugned proceedings are liable to be interfered in these writ petitions.*
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> *63. Thus, if an assessee has been assigned administratively with the Central Authorities, pursuant to the decision taken by*

the GST Council as notified by Circular No.01/2017 bearing Reference F.No.166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments.

64. Similarly, if an assessee has been assigned to the State Authorities, pursuant to the decision taken by the GST Council as notified by Circular No.01/2017 bearing Reference F.No. 166/Cross Empowerment/GSTC/2017 dated 20.09.2017, the officers of the Central GST cannot interfere although they may have such intelligence regarding the alleged violation of the Acts and Rules by an assessee.

65. The manner in which the provisions have been designed are to ensure that there is no cross interference by the counterparts. Only exception provided is under Section 6 of the respective GST enactement. Therefore, in absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assesse who is not assigned to them.

66. Therefore, the proceedings initiated by the respondents so far against the respective petitioners by the Authorities other than the Authority to whom they have been assigned to are to be *held as without jurisdiction. Therefore, the impugned proceedings warrants interference.*

67. At the same time, it is noticed that there is possibly case made out against each of the petitioners and since same power ought to have been exercised by the respective counterparts of the respondents, namely the Central Authority/State Authority as the case may be, to whom the respective petitioners have been assigned, proceedings should be initiated against each of the petitioners by the Authority to whom they have been assigned for the purported loss of Revenue under the respective GST Enactments.

68. Therefore, while quashing the impugned proceedings, there shall be a direction to the Central Authority/State Authority as the case may be to whom the respective petitioners have been assigned for administrative purpose to initiate appropriate proceedings afresh against them strictly in accordance with the provisions of the respective GST Enactments and GST Enactments Rules and Circular issued thereunder. The time between the initiation of the proceedings impugned in these writ petitions and time during the pendency of the present writ petitions till the date of receipt of this order shall stand excluded for the purpose of computation of limitation."

7. That being the case, the impugned order has to be held to be without jurisdiction. Considering the same, the case is remitted back to the respondent to take decision as to whether the respondent wishes to refer the matter to the Central Authority, where the petitioner is assessed to tax or in alternative, to pass the orders. In such case, in view of the order passed by this Court in the batch of cases in ***Tvl.Varadhan Infraastructure*** (cited supra), the petitioner shall give a reply to the notice, which was issued prior to aforesaid date with the Central Authority or the State Authority as such.

8. It is noted that the petitioner has given a reply on 16.10.2023. Considering the same, the respondent or the Central Authority, as the case may be, shall pass appropriate orders on merits in accordance with law.

9. Accordingly, these Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

22.04.2024

To

The Assistant Commissioner [ST]
Rajapalayam I Asst. Circle
Commercial Tax Department
Sivakasi, Tamil Nadu – 626 117.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.5815 & 5816 of 2024

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