BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.7411 & 6623 of 2024
and
W.M.P.(MD)Nos.6826, 6828, 6182 & 6183 of 2024

W.P.(MD)No.7411 of 2024:

G.Sadayaramanujam. ... Petitioner

Vs.

1.The State Tax Officer (ST),
O/o.the Assistant Commissioner (ST),
Theni-2 Assessment Circle,
No.333-A, Madurai Road,
SIDCO Compound,
Theni.

2.GGN Spinning Mill (P) Ltd.,
No.7, East Market,
Theni.

3.G.Susila,
4.G.Balamurugan,
5.G.Prabhakar. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the show cause notice issued by the first respondent dated 28.12.2023 in reference No.ZD3312232370208 for the year 2017-18 and quash the same.

For petitioner	: Mr.N.Mohan
For respondents	: Mr.R.Suresh Kumar Additional Government Pleader for R1

W.P.(MD)No.6623 of 2024:

G.Sadayaramanujam. ... Petitioner

Vs.

1.The State Tax Officer (ST),
O/o.the Assistant Commissioner (ST),
Theni-2 Assessment Circle,
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3.G.Susila,
4.G.Balamurugan,
5.G.Prabhakar. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the show cause notice issued by the first respondent dated 28.12.2023 in reference No.ZD331223234208T for the year 2018-19 and quash the same.

For petitioner : Mr.N.Mohan
For respondents : Mr.R.Suresh Kumar
Additional Government Pleader for R1

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COMMON ORDER

By this common order, both the Writ Petitions are taken up for dismissal.

2. The petitioner has challenged the impugned notice dated 28.12.2023 in DRC 01 dated 28.12.2023 together with DRC 01A for the assessment years 2017-18 and 2018-19.

3. This is the second round of litigation before this Court. Earlier, the petitioner had filed W.P(MD)No.22874 of 2021 for the following relief:

> *"Directing the 1st respondent to receive the tax due of Rs.6,45,414/- (till Nov-21) and Rs.2,81,000/- (up to date for December 2021 approximately) in respect of GSTIN No. 33AAACG6670M1ZE without penalty by providing an user ID and password temporarily so that the petitioner can file GST-R1 and GST-R3B returns regularly along with his future taxes within a time to be stipulated by this Court based on the communication dated 15.12.2021 by the 1st respondent."*

4. The said Writ Petition was filed both against the Department and the private respondents/respondents 3 to 5 herein, who are the legal representatives of his deceased brother namely, Gurusamy. The Writ Petition was disposed of, against which, the petitioner had also filed W.M.P.(MD)No.3423 of 2022 for the following relief:

"To Recall the order dated 09.02.2022 in WP.No.22874/2021 and reopen the Writ Petition and pass such further or other orders as this Hon'ble Court may deem fit."

5. After discussion, W.M.P.(MD)No.3423 of 2024 was allowed on 21.03.2022 with the following observation:

"2. Earlier, by an interim order, dated 25.06.2003, the then Company Law Board in a proceedings initiated by the petitioner against the second respondent and his brother late G.Gurusamy had passed an interim order on 03.08.2006, by allowing the petitioner to open bank account in a Nationalised Bank in the name of the Company and to operate the said company account for carrying out exclusively day-to-day operation of Unit B of the second respondent company. The Company Petition which was filed before the Company Law Board in Company Petition No.29 of 2003, under Section 397 and 398 of the Companies Act, 1956 is still pending before the National Company Law Tribunal after the Company Law Board was taken over by the National Company Law Tribunal. It appears that after the implementation of the Goods and Service Tax, late G.Gurusamy, brother of the petitioner, who was managing the Company had also obtained a Goods and Service

Tax Registration. The Company had failed to comply with the requirements under the Companies Act, 2013 and therefore, the name of the Company was struck off from the Register of Companies. It appears that the name of the Company was struck off as early as 2018 and no steps were taken either by the petitioner or by the petitioner's brother, late G.Gurusamy.

3. The facts on record also indicate that the petitioner was required to co-operate with his brother during his life time for restoring the registration of Company to the files of the Registrar of Companies/RD. However, the petitioner has failed to co-operate with his brother, who is now represented by his legal heirs, who have been impleaded as respondents 3 to 5. It appears that the business carried out in Unit A under the control of petitioner's brother and later by the newly impleaded respondents, namely, respondents 3 to 5 have been stopped. They have taken steps for cancelling the Goods and Services Tax Registration. Unit B, on the other hand, under the control of the petitioner is still carrying on business. The revenue cannot be denied of the tax that is payable for the supplies effected by the petitioner from Unit B and therefore, the private respondents, namely, respondents 3 to 5 cannot have a say by stating that the second respondent itself has ceazed to exist and therefore the petitioner can neither carry on the business nor pay the tax for the supplies already effected. The private dispute between the petitioner and the legal heirs of late G.Gurusamy has to be resolved in the National Company Law Tribunal, which is now seized of the matter. However, as long as there is supply of goods and service from the second respondent from Unit B, there cannot be any embargo from payment of tax. The private respondents also cannot strangulate the business of Unit B under control of the petitioner.

4.At the same time, I am inclined to allow the this Miscellaneous Petition as prayed for. Meanwhile, the petitioner is directed to take steps for revive registration which has been cancelled on account of the failure of the second respondent to file the returns."

6. The Department has now issued the impugned notice under Section 74 of the respective GST enactments for proposing to levy penalty on the petitioner for not filing the Return. For the sake of convenience, relevant portion of the impugned notice dated 28.12.2023 for the assessment year 2017-18 reads as under:

TVL.G.G.N SPINNING MILL PRIVATE LIMITED bearing GSTIN 33AAACG6670M1ZE, doing business within the jurisdiction of Theni-II Assessment Circle has furnished monthly returns in Form-3B for the tax period from 2017-18 and reported the total and taxable outward supply of Rs.119845084 /- and Rs. 119845084/- respectively.

It is to be noted that as per Section 44 of the TN GST/CGST Act, 2017 read with Rule 80 of the TN GST/CGST Rules, 2017, every registered person paying tax under Section 9 of the Act, shall furnish an Annual Return in Form GSTR-9 for every financial year electronically on or before the 31st day of December following the end of such financial year through the GST Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

Further, as per the proviso appended below to Rule 80(3) of GST Rules, 2017, whose aggregate turnover during a financial year exceeds **five crore rupees** shall get their accounts audited as specified under sub-Section (5) of Section 35 of the TN GST/CGST Act, 2017 and furnish a copy of audited annual accounts and reconciliation statement, duly certified, in Form GSTR-9C, electronically through the GST Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

Verification of GST Common Portal and GST back office system of this Department reveals that the registered person has not furnished the Annual Return in Form GSTR-9 and reconciliation statement in Form GSTR-9C along with copy of audited annual accounts if applicable.

It is pertinent to note that as per Section 47(2) of the TN GST/CGST Act, 2017, any registered person who fails to furnish the Annual Return in Form GSTR-9 under Section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to maximum of an amount calculated at a quarter per cent of his turnover in the State of Tamil Nadu. Accordingly late fee payable by the registered person upto has been worked out as below:-

Turnover in the State	0.25% of the turnover in the State	
	CGST	SGST
119845084	299613	299613

Considering the above workings, the 0.25% of the turnover in the state payable by the registered person is restricted to Rs. 299613/- (CGST) and Rs. 299613/- (SGST) by 30 Days, failing which, action will be initiated under section 73(1) of the TN GST/CGST Act, 2017. Besides, the registered person is requested to furnish the Annual Return in Form GSTR-9 and reconciliation statement in Form GSTR-9C along with copy of audited annual accounts through GST Common Portal immediately.

However, the registered person wish to file any submissions against the above ascertainment, the same may be furnished by **30 Days** in Part-B of Form DRC-01A along with supporting documents, if any, for the year 2017-18 within the time limit provided in Form GST DRC-01A intimation without fail.

7. In my view, there is no merits in these Writ Petitions. The petitioner has

to await for the orders to be passed by the respondent. In case, any adverse orders are passed, it is always open to the petitioner to work out his remedy in the manner known to law.

These Writ Petition are dismissed, with above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

10.07.2024

To

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O/o.the Assistant Commissioner (ST),
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SIDCO Compound,
Theni.

C.SARAVANAN, J.

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