



W.P.(MD) No.8674 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8674 of 2024

and

W.M.P.(MD)Nos.7920 & 7921 of 2024

M/s.Ram Agencies,
Rep. by its Proprietrix Mrs.Adaikkammal,
TS.No.3149, Door No.40, 3rd Street,
Pudukottai – 622 001.

... Petitioner

Vs.

The Assistant Commissioner of Central Tax,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur – 613 007.

... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the respondent vide his Order-in-Original No.24/2023-GST, dated 26.12.2023, quash the same as the same is passed by grossly violating the principles of natural justice and also passed against the provisions of the Goods and Services Tax Act, 2017.

For Petitioner : Mr.A.Satheesh Murugan

For Respondent : Mr.N.Dilipkumar
Standing Counsel



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ORDER

WEB COPY The petitioner has challenged the Order-in-Original No.24/2023-GST, dated 26.12.2023, passed by the respondent in respect of the assessment years 2017-2018, 2018-2019 and 2019-2020.

2. The specific case of the petitioner is that the impugned order has been passed despite stay being granted by the Principal Seat of this Court against the operation of notification extending the period of limitation vide G.O.(Ms)Nos.9 and 56 and G.O.(Ms)Nos.41 and 1, which has been stayed in W.P.No.33343 of 2023, on 27.11.2023.

3. That apart, the impugned Order-in-Original No.24/2023-GST, dated 26.12.2023, is further assailed on the ground that the petitioner is assessed to the State Tax Authorities and therefore, the impugned order passed by the respondent, namely, Central Tax Authorities is also contrary to the law settled by this Court in **Tvl.Vardhan Infraastructure vs. The Special Secretary**, 2024 (3) TMI 1216.

4. The learned Standing Counsel for the respondent confirmed that the petitioner is assessed by the State authorities pursuant to the allocation



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made by the Central Government in terms of Circular No.1/2017-GST (Council), dated 20.09.2017 bearing reference F.No.166/Cross Empowerment/GSTC/2017.

5. The learned Standing Counsel for the respondent would submit that the decision rendered by this Court in **Tvl.Vardhan Infraastructure's case** [cited supra] is distinguishable in the light of the decision of the Division Bench of this Court in **Kuppan Gounder P.G. Natarajan vs. Directorate General of GST Intelligence, New Delhi**, 2022 (58) G.S.T.L. 292 (Mad.), wherein it has been held as under:-

"27.Firstly, we need to take note of whether the State tax authorities and the Central tax authorities enjoy concurrent jurisdiction, the issue of cross-empowerment of the State tax authorities and the Central tax authorities. We have pointed out about the clarification relied on by the Revenue dated 05.10.2018. Thus, the ambiguity with regard to the initiation of enforcement action by the State and the Central authorities has been lingering for quite some time and the matter having been brought to the notice of the GST Council, in its meeting held during January 2017, it was decided that both the Central and State tax administrations have the power to take intelligence-based enforcement action in respect of the entire value chain. Based on such decision of the GST Council, the CBEC issued clarification dated 05.10.2018. Thus, this puts an end to the ambiguity and it is clear from the said clarification that if an intelligence-based enforcement action is taken



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against a taxpayer, which is assigned to State tax authority, the Central tax authority is entitled to proceed with the matter and take it to the logical conclusions and the same principle is applicable vice versa. This circular was referred to in Siddhi Vinayak Trading Company (supra) and the challenge was rejected by referring to the above clarification issued by the CBEC.

28. Section 6(2)(b) of the CGST Act states that where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under the CGST Act on the same subject matter. The appellant's case rests upon the interpretation of the said provision. The key words occurring in Section 6(2)(b), viz., "subject-matter" are required to be interpreted to consider as to whether the challenge to the summons impugned in the writ petition was maintainable."

6. The issue regarding cross-empowerment and the jurisdiction of the counterparts to initiate proceedings when an assessee has been allocated either to Central Tax Authorities or to the State Tax Authorities was examined in detail by this Court in **Tvl.Vardhan Infraastructure's case** [cited supra]. After examining the provisions, this Court has concluded that in the absence of notification issued for cross-empowerment, the authorities from the counterpart Department cannot initiate proceedings where an assessee is assigned to the counterpart. Therefore, the impugned Order-in-Original No.24/2023-GST, dated



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26.12.2023 passed by the respondent is quashed. However, liberty is given the State authorities to proceed against the petitioner in terms of the observations contained in the order passed by this Court in **Tvl.Vardhan Infraastructure's case** [cited supra].

7. This Writ Petition stands allowed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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10.04.2024

To

The Assistant Commissioner of Central Tax,
Thanjavur Division,
Ponnagar, Medical College Road,
Thanjavur – 613 007.



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C.SARAVANAN, J.

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