BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

**W.P.(MD) Nos.11282 and 11283 of 2023**
**and**
**W.M.P.(MD) Nos.9850 and 9849 of 2023**

M/S.Sabarish Agencies
rep.by its Prop.A.Manikandan,
S/o. Ariya Puthiran,
No.28, Old Post Office Street,
Thuraiyur,
Trichy 621 010.

... Petitioner in both W.P.S.,

/vs./

The Assistant Commissioner,
O/o. Assistant Commissioner of GST & Central Excise,
Trichy II Division, No.1, William Road,
Cantonment,
Trichy 620 001.

... Respondent in W.P.(MD) No.11282 of 2023

1.The Assistant Commissioner,
O/o. Assistant Commissioner of GST & Central Excise,
Trichy II Division, No.1, William Road,
Cantonment,
Trichy 620 001.

2.The Commercial Tax Officer,
Thuraiyur Range,
Trichy.

3.The Manager,
DBS Bank,
Door No.23, Bharathi Theatre Complex,
Thuraiyur,
Trichy District.

... Respondent in W.P.(MD) No.11283 of 2023

**PRAYER in W.P.(MD) No.11282 of 2023:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order, the order in Original No.36/2022 -ST dated 14.06.2022 passed by the respondent and quash the same.

**PRAYER in W.P.(MD) No.11283 of 2023:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order DBS/742/GEN/14/2023-2024 dated 20.04.2023 passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to de-freeze the petitioner's current bank account No.0742351000001911 with DBS Bank (Formerly known as Laxmi Vilas Bank), Thuraiyur.

In W.P.(MD) No.11282 of 2023

For Petitioner : Mr.B.Vijay Karthikeyan
For Respondent : Mr.N.Dilip Kumar
Standing Counsel

In W.P.(MD) No.11283 of 2023

For Petitioner : Mr.B.Vijay Karthikeyan

For R1 & R2 : Mr.N.Dilip Kumar
Standing Counsel

For R3 : No appearance

**COMMON ORDER**

The petitioner, a service provider, who claims to have closed on his business during 2017, was issued with a show cause notice in SCN No.22/2021-ST dated 28.04.2021. The petitioner however failed to respond to the same and therefore, the respondent proceeded to pass the impugned Order in Original No. 36/2022-ST in F.No.GEXCOM/ADJN/SST/783/2021-CGST-DIV-2-TRY dated 14.06.2022 and the Order in DBS/742/GEN/14/2023-2024 dated 20.04.2023.

2.The specific case of the petitioner is that the petitioner came to know about the impugned order only after the petitioner's bank account was attached on 20.04.2023 and therefore, the petitioner is before this Court against the attachment order in W.P.(MD) No.11282 of 2023. The specific case of the petitioner is that the services provided by the petitioner were exempted in terms of Serial Nos.9 and 29(f) of Mega Exemption Notifications – Notification No. 12/2012-S.T. Dated 17.03.2012. It is therefore submitted that the petitioner has been subjected to unjust demand vide the impugned order and the petitioner's bank account has been wrongly attached by the respondent. It is submitted that the petitioner be give an opportunity to file a detailed reply.

3.The learned Standing Counsel for the respondent would draw attention to the interim order passed by this Court on 13.07.2023 at the time of admission of the writ petition in W.P.(MD) No.11282 of 2023, impugning the Order in Original No.36/2022-ST in F.No.GEXCOM/ADJN/SST/783/2021-CGST-DIV-2-TRY dated 14.06.2022. It is submitted that pursuant to the aforesaid order, an exercise was carried out and a report was generated on 03.08.2023. It is further submitted that the personal hearing was also held on 18.07.2023 by the Assistant Commissioner of GST. It is further submitted that the petitioner had failed to participate in the proceedings and therefore, the respondent was constrained to pass the order earlier as no reply was filed by the petitioner earlier. Hence, he prays for dismissal of these writ petitions. It is further submitted that the petitioner can be asked to workout the appellate remedy before the Appellate

Commissioner in terms of Section 85 of the Finance Act, 1994.

4.I have considered the submissions of the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

5.*Prima facie* it appears that the petitioner was engaged in providing exempted services in terms of Serial Nos.9 and 29(f) of the Mega Exemption Notifications – Notification No.12/2012-S.T. dated 17.03.2012. The petitioner appears to have a *prima facie* case on merits. Al though the petitioner can be asked to workout the remedy before the Appellate Commissioner, the fact remains that pursuant to the orders passed by this Court on 13.07.2023, an exercise was undertaken by the Original Authority, namely the Assistant Commissioner of GST.

6.Under those circumstances, this Court is inclined to set aside the impugned order and remit the case back to the respondent to pass orders afresh on merits and in accordance with law within a period of 60 days from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the respondent. The show cause issued in SCN No.22/2021-ST dated 28.04.2021 together with the impugned order shall be treated as show cause notice and corrigendum. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order.

7.In view of the above order, the impugned attachment order passed by the third respondent in W.P.(MD) No.11283 of 2023 in DBS/742/GEN/14/2023-2024 dated 20.04.2023 is hereby set aside.

8.These Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

**08.04.2024**

Index : Yes / No
Internet : Yes / No
mm

**C.SARAVANAN, J.**

mm

**W.P.(MD) Nos.11282 and 11283 of 2023**

**08.04.2024**