BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14221 of 2024
and
W.M.P.(MD) No.12477 of 2024

M/s.The Coronation Fireworks Factory,
Represented by its Partner K.Jayasankar. ... Petitioner

Vs.

1.The Joint Director,
Directorate General of GST Intelligence (DGGI),
Coimbatore Zonal Unit,
155-1, Lakshmanan Street, Ukkadam,
Coimbatore – 641 001.

2.The Commissioner of CGST & Central Excise,
Central Revenue Building,
No.4, Lal Bahadhur Shastri Road,
Bibikulam, Madurai – 625 002. ... Respondents

PRAYER: 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 Show Cause Notice Nos. 107/2023 dated 28.12.2023 issued by the first respondent and quash the same in respect of the proposal at Para 17.1 (e) of the impugned notice proposing to appropriate the cash of Rs.1,82,25,000/- seized from the petitioner's residential premise and consequently to direct the second respondent to refund the said amount of Rs.1,82,25,000/- seized vide mahazar dated 08.10.2020.

For petitioner	: Mr.M.Karthikeyan
For respondents	: Mr.N.Dilip Kumar Senior Standing Counsel

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ORDER

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the respondents.

2. The petitioner is challenged the impugned show cause notice Nos.106, 107, 108/2023 GST, dated 28.12.2023. The impugned show cause notice has been issued to the petitioner for the assessment period from July 2017 to October 2020.

3. It is the case of the petitioner that an inspection was carried out on 08.10.2020 and there was a seizure of cash for a sum of Rs.1,82,25,000/-, wherein, it has been stated that the aforesaid amount of Rs.1,82,25,000/-, was recovered from one of the partners of the petitioner *viz.*, K.Jeyashankar and was

liable for confiscation under the provisions of the Central Exercise Act, 1944/respective GST Act, 2017.

4. It is the case of the petitioner that pursuant to the aforesaid seizure, the show cause notice Nos.04, 05, 06 & 07/2021 C-Ex, dated 03.09.2021 was issued to the petitioner, in which also, there was a reference to the aforesaid seizure of the amount of Rs.1,82,25,000/-, which was invested in a Fixed Deposit in the name of the President of India.

5. The learned counsel for the petitioner submits that the aforesaid show cause notice issued on 03.09.2021 under the provisions of the Central Exercise Act, 1944, culminated in Order-in-Original No.MDU/CEX/COM/01 to 04/2023, dated 31.01.2023.

6. It is submitted that the petitioner had, also, challenged the aforesaid order before the Customs, Exercise and Service Act Appellate Tribunal in Appeal No.40138 of 2023, along with appeal No.40141 of 2023, filed by the one of the partners *viz.*, K.Jeyasankar together with the other appeals and that the Tribunal

by its final order dated 20.03.2024, has allowed the appeal.

7. The learned counsel for the petitioner submits that in the order, the Tribunal has also held as under:

> *"13.15. Before we part, it has to be noted that an amount of Rs.1,82,25,000/- was seized in cash from the residential premises of Shri K.Jeyakumar. However, the show cause notice does not propose to confiscate the same or appropriate towards the excise duty. The adjudicate the same or appropriate towards duty liability. Therefore, it is to be understood that the seizure of cash is of no relevance or consequence to the case set up by the department. Consequently, the seized cash has to be refunded to the appellant, if not done already. So, ordered accordingly."*

8. It is submitted that in the teeth of the aforesaid order, the backdated impugned show cause notice dated 28.12.2023 has been issued. It is further submitted that the said show cause notice was dispatched only on 27.03.2024 and received by the petitioner on 28.03.2024.

9. It is, therefore, submitted that the impugned show cause notice proceedings is without jurisdiction and clearly intended to defeat the rights that have accrued to the petitioner pursuant to the order in Appeal No.40138 of 2023

vide final order dated 20.03.2024.

10. The learned counsel for the petitioner would also submit that various High Courts have held that there is no scope for either seizure or confiscation of cash.

11. It is therefore, submitted that Section 67 of the respective GST enactments are clearly eschew seizure of cash and therefore, the amount seized has to be refunded back in terms of the decision of the Tribunal as mentioned above.

12. On the other hand, the learned counsel for the petitioner has also drawn the attention to the clarification issued by the Commissioner (GST) Investigation, CBIC, dated 25.05.2022, wherein it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings. However, there is also no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of

such proceedings. The Tax Officer should however, inform the taxpayers regarding the provisions of voluntary tax payments through DRC-03. It is further submitted that this Writ Petition deserves to be allowed.

13. The learned Senior Standing Counsel for the respondent would submit that as against the final order of the Tribunal in Appeal No.40138 of 2023 dated 20.03.2024, the Department is in the process of filing statutory appeal before this Court.

14. That apart, it is submitted that the show cause notice does not contain a proposal for confiscating the cash, that was seized from the custody of the petitioner's partner on 08.10.2020.

15. The learned Senior Standing Counsel for the respondent would, further, submit that in the show cause notice, there is only proposal to appropriate the aforesaid amount towards the tax liability and that the aforesaid amount has been invested in a Fixed Deposit in the name of the President of India.

16. It is submitted that the seized amount has not been confiscated and therefore, the petitioner will be entitled to refund, if the demand proposed in the impugned show cause notice, dated 28.12.2023, is dropped. Therefore, there is no merits in the present Writ Petition.

17. Having considered the arguments advanced by the learned counsel for the petitioner and Senior Standing Counsel for the respondent, the Court is of the view that there is no merits in the present Writ Petition and this Writ Petition is liable to be dismissed.

18. The petitioner cannot scuttle the Show Cause proceedings initiated under the provisions of the respective GST enactments, merely because, the petitioner has secured favourable Order from the Tribunal *vide* Final Order Nos.40303 to 40311 of 2024, dated 20.03.2024 in Appeal No.40138 of 2023.

19. Further, the impugned show cause notice has also only sought to appropriate the amount that was seized on 08.10.2020 from the custody of the petitioner's partner. That apart, the amount, that was seized on 08.10.2020, can be

appropriated only towards the tax liability, if any of the petitioner under the provisions of the respective GST enactments and it is for the petitioner to explain as to why the aforesaid amount should not be appropriated towards the tax liability of the petitioner.

20. Therefore, this Writ Petition is liable to be dismissed. The petitioner is directed to participate in the impugned show cause notice proceeding by filing proper reply within a period of 30 days from the date of receipt of a copy of this order.

21. The respondent shall consider and pass orders on merits. Needless to state, in case the petitioner succeeds, the seized amount has to be refunded back to the petitioner.

With above observation, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

01.07.2024

C.SARAVANAN, J.

apd

W.P.(MD) No.14221 of 2024

01.07.2024