BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.16037, 16143, 16145 of 2022
and
WMP(MD)Nos.11593, 11672 of 2022, 4761, 4762 of 2023

M/s.Sublaxmi Fashion World,
Rep. by its Partner
D.Ransoraram Choudhary .. Petitioner in all WPs

v.

1.The Deputy Director,
Office of Directorate General of
Goods and Services Tax Intelligence (DGGSTI),
Madurai Regional Unit,
No.4, Sri Laksmi Complex,
P & T Nagar Main Road,
Madurai – 625 014.

2.The Senior Intelligence Officer,
Office of Directorate General of
Goods and Services Tax Intelligence (DGGSTI),
Madurai Regional Unit,
No.4, Sri Laksmi Complex,
P & T Nagar Main Road,
Madurai – 625 014.

3.The Assistant / Deputy Commissioner of GST and Central Excise,
Nagercoil Range,
Tirunelveli Division,
Madurai Commissionerate,
Madurai – 625 014.

4.The Assistant Commissioner (ST),
Nagercoil (Town) Circle,
Nagercoil Zone,
Tirunelveli Division,
Tirunelveli – 627 007. .. Respondents in all WPs

PRAYER in WP(MD)No.16037 of 2022: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned summons issued by the second respondent in DIN : 202207DSS30000111B15 dated 13.07.2022 and quash the same.

PRAYER in WP(MD)No.16143 of 2022: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Mandamus directing the respondents to consider the refund applications dated 24.06.2022 in GST – RFD – 01 and to grant refund of Rs.99,86,451/-.

PRAYER in WP(MD)No.16145 of 2022: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned show cause notice issued by the first respondent in 42/2022-GST dated 25.04.2022 and quash the same.

For Petitioner	:	Ms.Aparna Nandakumar for Mr.Arun Kurian Joseph
For Respondents	:	Mr.N.Dilip Kumar, Senior Standing Counsel for R.1, R.2 Mr.R.Nandhakumar for R.3 Mr.G.V.Vairam Santhosh, Additional Government Pleader for R.4 (In all WPs)

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COMMON ORDER

The petitioner is a ready-made garments trader. There was a search and seizure operation in the petitioner's business premises, followed by which, the petitioner was issued with show cause notices and summons for enquiry. The petitioner is also said to have made some voluntary deposits during the course of search operations and the enquiry. Now, he has filed these writ petitions for the following reliefs:-

(i) WP(MD)No.16145 of 2022 is filed challenging the show cause notice issued by the first respondent dated 25.04.2022;

(ii) WP(MD)No.16037 of 2022 is filed challenging the summons issued by the second respondent dated 13.07.2022; and

(iii) WP(MD)No.16143 of 2022 is filed for a direction to consider the petitioner's refund application dated 24.06.2022 and to grant refund of Rs.99,86,451/-.

Case of the Petitioner:-

(i) WP(MD)16145/2022:-

2.1.Learned Counsel for the petitioner attacked the impugned show cause notice dated 25.04.2022 on two grounds. The first ground is that the Officer, who has conducted the search and seizure operations, has issued the show cause notice as the adjudicating authority and he is not the proper Officer under the GST Act. In this regard, she has relied upon the Circular issued by the Commissioner of Commercial Tax, Government of Tamil

Nadu, in No.23/2021, dated 04.10.2021, wherein, it is stated that the show cause notice can be issued only by the jurisdiction proper Officer concerned and not by the Inspecting Officers.

2.2.The second ground is that the Officer has predetermined the issue at the stage of issuance of show cause notice itself. In this regard, she has referred to paragraph nos.7.1, 7.2.1, 7.2.2, 7.3 to 7.5 in the show cause notice and submitted that these paragraphs would reveal the manner in which the show cause notice has been issued. Since the Officer has predetermined the issue, the impugned notice is liable to be quashed.

(ii) WP(MD)No.16037/2022:-

3.1.This writ petition is filed as against the summons dated 13.07.2022, which was issued in consequence of the show cause notice dated 25.04.2022. Since the show cause notice dated 25.04.2022 is liable to be set aside on the aforesaid two grounds in WP(MD)No.16145 of 2022, the consequent summons dated 13.07.2022 is also liable to be set aside.

(iii) WP(MD)No.16143/2022:-

4.1.This writ petition is filed for refund of Rs.99,86,451/-. This amount, according to the learned Counsel, is obtained under threat and coercion from the petitioner.

4.2.The search and seizure operations commenced on 26.10.2021 @ 09.30 am and went upto 11.30 am on 27.10.2021. However, on 27.10.2021, during the course of search operations, the petitioner was compelled to pay a sum of Rs.79,86,451/- and the petitioner was also compelled to pay another sum of Rs.20,00,000/- on 25.04.2022. Even before concluding the enquiry, the petitioner was put into pressure and was also forced to pay this amount. These are not voluntary payments and without any basis, these amounts have been collected from the petitioner on compulsion. Therefore, she prayed for refunding the same.

Response of the Respondents 1 & 2:-

(i) WP(MD)No.16145/2022:-

5.1.Learned Senior Standing Counsel for the respondents submitted that an inspection was conducted in the petitioner's premises on 26.10.2021, wherein, they have found that the petitioner was doing business in an yet another premises which has not been disclosed in the registration. The petitioner has also admitted that they had carried out the business of retail sales of ready made garments in the undisclosed premises and that inadvertently they have omitted to mention the same in the form filed for registration. Therefore, the vouchers and other documents, cloths and materials, which were found in the undisclosed premises, have been seized on a mahazar. Later, on the request of the petitioner, the cloths and materials were returned after obtaining a bond and bank guarantee from the petitioner. For confiscating the seized goods, the impugned show cause notice has been issued.

5.2.He further submitted that there is no predetermination of the issue in the show cause notice. A reference about the charges and the violations, on which the enquiry has been contemplated as against the petitioner, has been mentioned in the show cause notice, enabling the petitioner to give his explanation and it cannot be termed as predetermination.

5.3.By producing the Circulars dated 01.07.2017 and 05.07.2017 issued by the Government of India, learned Senior Standing Counsel submitted that the notice has been issued by the proper Officer alone. The impugned show cause notice has been issued for confiscating the seized goods as per Section 130 of the GST Act. The competent authority, as per the Circular dated 05.07.2017 to deal with Section 130 of the GST Act, is the Deputy / Assistant Commissioner of Central Tax. As per the Circular dated 01.07.2017, the Deputy / Assistant Director of GST Intelligence or Deputy / Assistant Director of GST or Deputy / Assistant Director of Audit are appointed as Central Tax Officers and are vested with the powers exercised by the Deputy / Assistant Commissioner of Central Tax. Therefore, there is no violation in the issuance of show cause notice.

(ii) WP(MD)No.16037/2022:-

6.1.The summon dated 13.07.2022 is the fifth summon, which is challenged in this writ petition. The inspection was conducted on 26.10.2021 and thereafter, the Partner of the petitioner firm has appeared before the respondents on 11.04.2022 and 12.04.2022 and has also offered an voluntary statement. Thereafter, the show cause notice was issued on 25.04.2022. On that date, the petitioner has voluntarily paid a sum of Rs.20,00,000/-. The petitioner has retracted the mahazar dated 26.10.2021 by a reply dated 22.05.2022.

6.2.Thereafter, a summon was issued on 07.06.2022 for the enquiry on 13.06.2022. The petitioner appeared for the enquiry on 13.06.2022 and sought for adjournment. The enquiry was postponed to 01.07.2022, for which, another summon was issued on 16.06.2022. The petitioner was also directed to produce the income tax returns, profit & loss statements and other supporting documents for the period from 2017-18 to 2021-22. The petitioner has made a further request to postpone the enquiry and therefore, the enquiry was postponed to 14.07.2022, for which, another summon was issued on 01.07.2022. The petitioner again requested for an adjournment and therefore, the summon dated 13.07.2022 was issued for the fifth time, for the enquiry on 28.07.2022, which is impugned now. By adopting delaying tactics, the petitioner is prolonging the issue from the very beginning and therefore, he prayed for appropriate orders.

(iii) WP(MD)No.16143/2022:-

7.1.The payments have been made by the petitioner voluntarily and it is not on compulsion. In this regard, the learned Senior Standing Counsel has relied upon the letter dated 21.05.2022 of the petitioner annexed in the writ petition and submitted that the petitioner himself has stated that this sum of Rs.99,86,451/- has to be treated as voluntary payment paid inadvertently. However, this letter dated 21.05.2022 was retracted by the petitioner by a subsequent letter dated 22.05.2022. He further submitted that these payments have been made through DRC-03 u/s.74(5) of the Act, using the assessee's user-id and password. Such payments cannot be made under threat or coercion.

8.This Court considered the rival submissions made on either side and perused the materials placed on record.

(i) WP(MD)No.16145/2022:-

9.The petitioner has challenged the show cause notice dated 25.04.2022 issued by the respondents in this writ petition. The respondents conducted an inspection on the petitioner's premises and found that the petitioner is doing business from a building, which was not disclosed as a registered place of business. Therefore, the respondents have initiated action for confiscation of the goods, which were seized from the undisclosed place, as per Section 130 of the GST Act.

10.As per the Circulars dated 01.07.2017 and 05.07.2017 issued by the Government of India, for initiating action u/s.130 of the GST Act, the Deputy / Assistant Commissioner of Central Tax, the Deputy / Assistant

Director of GST Intelligence or Deputy / Assistant Director of GST or Deputy / Assistant Director of Audit are vested with the powers. The impugned show cause notice was issued by the Deputy Director and as such, this Court is not inclined to accept the submission of the petitioner that the show cause notice has been issued by an incompetent authority.

11.Learned Counsel for the petitioner, by relying upon the paragraphs 7.1 to 7.5 of the show cause notice, submitted that the authority has predetermined the issue. This Court has perused the same and this Court is of the view that it is only a disclosure of the charges calling upon the petitioner to offer his explanation for the show cause notice. Without any reference to the charges in the show cause notice, it will be difficult for the petitioner to make his submissions during the enquiry and it cannot be termed as predetermining the issue.

12.As such, this Court is not inclined to entertain WP(MD)No.16145 of 2022 and the same is accordingly, dismissed.

(ii) WP(MD)No.16037/2022:-

13.The writ petition in WP(MD)No.16037 of 2022 is filed challenging the summons dated 13.07.2022, which was issued consequent to the show cause notice dated 25.04.2022. In view of the order passed in WP(MD)No. 16145 of 2022, the writ petition in WP(MD)No.16037 of 2022 stands dismissed.

(iii) WP(MD)No.16143/2022:-

14.The petitioner's Counsel claims that the petitioner was compelled to pay a sum of Rs.99,86,451/-. However, in the letter dated 21.05.2022, the petitioner himself has stated in writing that this amount shall be treated as voluntarily payment paid inadvertently. Though the petitioner has retracted this letter dated 21.05.2022 by a subsequent letter dated 22.05.2022, the fact remains that the sum of Rs.79,86,451/- was paid through DRC-03, which can be paid only through the petitioner's individual user-id and password and therefore, this Court is not inclined to accept the petitioner's plea that the amount was not voluntarily paid. Accordingly, this writ petition also stands dismissed.

15.In view of the foregoing discussions and reasonings, all the three writ petitions stand dismissed. The respondents 1 & 2 are directed to conduct the enquiry in a fair and proper manner and pass appropriate orders, after affording reasonable opportunity to the petitioner. The respondents 1 & 2 shall also furnish the documents, which are required by the petitioner to offer his explanation to the impugned notices and also during the course of enquiry.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

22.02.2024

Index	:	Yes / No
NCC	:	Yes / No
Internet	:	Yes

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To

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Office of Directorate General of
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Madurai Regional Unit,
No.4, Sri Laksmi Complex,
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<u>B.PUGALENDHI, J.</u>

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<u>WP(MD)Nos.16037, 16143, 16145 of 2022</u>

22.02.2024