BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.19819 of 2022
&
W.M.P.(MD).Nos.14445 and 14446 of 2022

M.Ahmed Zuber ... Petitioner

Vs.

The State Tax Officer (Circle)
Commercial Tax Department
Uthamapalayam (Circle)
Theni District ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records relating tot he impugned recovery order of respondent dated 27.02.2021 and 29.01.2022 purported to have been issued under Sec.79 of the Central Goods and Sales Tax Act, 2017, quash the same.

For Petitioner : Mr.K.Appadurai

For Respondent : Mr.J.K.Jayaseelan, Govt.Advocate

O R D E R

Writ Petition is filed for issuance of a Writ of Certiorari calling for the records relating to the impugned recovery order of respondent dated 27.02.2021 and 29.01.2022 purported to have been issued under Sec.79 of the Central Goods and Sales Tax Act, 2017, quash the same.

2. The petitioner has challenged the impugned recovery notices issued to the petitioner seeking to recover a sum of Rs.27,440/- as detailed below:

" Order of recovery through specified officer under Sec.79 whereas a sum of Rs.7.440/- on account of tax,cess, interest and penalty is payable under the provisions of the SGST/CGST Act by the aforesaid person who has failed to make payment of such amount the The details of arrears are given in the table below:

Act	Tax/cess	Interest	Penalty	Others	Total
1	2	3	4	5	6
Integrated tax					
Central Tax	0	3720-	10000-		13720-
State/UT Tax		3720-	10000-		13720-
Cess					
Total		7440-	20000-		27440-

3. The specific case of the petitioner is that petitioner was unaware of any adverse orders being passed by the respondent and therefore question of issuance of impugned recovery notice U/s. 79 in Form GST DRC-09 is not maintainable. Hence, prays for quashing of the impugned order. The respondents on the other hand filed a detailed counter, wherein it is stated that the petitioner was issued with a summary of show cause notice in Form GSTDRC-01 electronically on 27.02.2021 as per R.142(1) of the GST Rules,2017 demanding tax, penalty and interest as detailed below:

Period	Difference of turnover	Tax due under CGST	Tax due under SGST	Penalty	Interest	Total
01.01.2018 to 31.03.2018	25675	5258-	5258-	20000-	7212-	37728

4. It is further submitted that the petitioner has not responded and therefore it was presumed that petitioner has nothing to say in the matter and therefore there is no other go except to proceed with further action. Accordingly summary of order in Form GST DRC-07 was issued on 20.04.2021 as per R.142(5) of TNSGT Rules,2017 demanding tax amount of Rs.10,516, penalty of Rs.2,000 and interest of Rs.7,440 (interest upto

20.04.2021) It is submitted that since the petitioner failed to pay the amount as demanded in the aforesaid orders, the tax of Rs.10,516 was recovered by deduction, from the Input Tax Credit as seen from the Electronic Credit Ledger on 26.10.2021 and 11.01.2022, leaving the penalty and interest. This was done as per Section 79 of the GST Act, 2017 read with Rule 143 of the GST Rules,2017.

5. It is submitted that the arrears of tax amount of Rs.10,516/- was recovered after long interval of more than 6 months. The petitioner has not produced any documentary evidences, regarding rectified his mistake before the recovery proceedings made is within the jurisdiction of GST Acts and Rules.

6. After recovery of Tax amount of Rs.10,516/- from input tax credit accumulate in his Electronic Credit Ledger on 26.10.2021 and 10.01.2022. Thus the balance amount of penalty and interest of Rs.20,000 and Rs.7,440 respectively, are still to be paid. Hence a notice in Form GST DRC-0 was issued to the defaulter as per Rule 143 of the GST Rules 2017.

7. In my view the amount involved is small. Considering the same, matter is remitted back to the respondent to pass a fresh order on merits subject to petitioner replying to show cause notice dated 27.02.2021. The summary of order in Form GSTDRC-07 issued on 20.04.2021 shall be treated as corrigendum to show cause notice issued on 27.02.2021.

8. The petitioner may be issued with a further notice to show cause as to why the balance amount should not be recovered as already recovery has been made. It is expected that respondent will issue a fresh notice within a period of 60 days from the date of receipt of a copy of this order to which the petitioner shall reply and thereafter appropriate orders shall be passed within a period of 30 days thereafter.

9. Writ Petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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C.SARAVANAN, J.

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Copy To:

The State Tax Officer (Circle)
Commercial Tax Department
Uthamapalayam (Circle)
Theni District

W.P.(MD)No.19819 of 2022

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