BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2024**

CORAM:

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

W.P.(MD) No.26270 of 2023

K.A.Ramadas ... Petitioner

/vs./

1.The Deputy Commissioner of GST & Central Excise,
Tiruchirapalli I Division,
No.1, Williams Road,
Cantonment,
Tiruchy 620 001.

2.The Assistant Commissioner of GST & Central Excise,
Office of the Deputy/Assistant Commissioner of GST & Central Excise,
Trichy I Division,
No.1, Williams Road,
Cantonment,
Tiruchy 620 001.

3.The Chief Manager,
Bank of Baroda,
Salai Road,
Trichy 620 018.

4.The Commissioner of GST and Central Excise (Appeals),
No.1, Williams Road,
Cantonment, Trichy ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to refund the excess amount of Rs. 14,16,116/- recovered from the petitioner's account bearing A/c.No. 74980200001842, maintained by the 3rd respondent, by considering the petitioner's representation dated 25.09.2023.

For Petitioner	: Mr.S.Muthuvenkatraman
For R1 & R2	: Mr.N.Dilip Kumar Senior Standing Counsel
For R3	: No appearance

ORDER

The petitioner has filed this Writ Petition for a Mandamus to direct the first respondent to refund the excess amount of Rs.14,16,116/- recovered from the petitioner's account bearing A/c.No.74980200001842, maintained by the third respondent, by considering the petitioner's representation dated 25.09.2023.

2.The specific case of the petitioner is that neither the show cause notice that preceded the aforesaid Order in Original No.71/22-ST dated 15.03.2022 bearing Ref.C.No.IV/19/75/2020-ST-ADJN nor the aforesaid Order in Original No.71/22-ST dated 15.03.2022 was received by the petitioner and that the

Department without communicating the aforesaid order has recovered an amount of Rs.14,70,900/- on 05.05.2023.

3.It is submitted that the petitioner has filed a statutory appeal before the Appellate Commissioner at Trichy on 02.06.2023, which has now been acknowledged vide letter dated 26.09.2023 and has assigned Appeal No.90/2023-ST against the Order in Original No.71/2022-ST dated 15.03.2022.

4.It is submitted that in terms of Section 35F of the Central Excise Act, 1944 as made applicable to Appeals under the provisions of Finance Act, 1994, the petitioner is only required to deposit 7.5%, which comes to Rs.54,785/- and therefore, the balance amount that was recovered by attaching the Bank account of the petitioner on 05.05.2023 should be ordered to be refunded back.

5.The learned Senior Standing Counsel for the respondents would submit that the appeal is not maintainable, as the order was despatched to the address given by the petitioner and therefore, it is deemed to have been received by the petitioner on the day it was returned from the address given by the petitioner in the service tax registration.

6.It is noticed that vide the aforesaid show cause notice No.58/2020-ST dated 29.12.2020 bearing Ref.C.No.IV/19/45/2020-ST-ADJN, the petitioner was called upon as follows:

> *"i) The service tax (including cess) of Rs.730,45048/- for the period from April 2015 to June 2017 should not be demanded and recovered from them under proviso to Section 73(1) of the Finance Act, 1994.*
>
> *ii) Appropriate interest on the Service Tax liability demanded at SL No. (1) Should not be demanded and recovered from them under Section 75 of the Finance Act, 1994 and*
>
> *iii) Penalty should not be imposed under the provisions of section 76 of the Finance Act, 1994.*
>
> *iv) Penalty should not be imposed on them under the provisions of section 78 of the Finance Act 1994 and*
>
> *v) Penalty should rot be imposed under the provisions of section 77 of the Finance Act, 1994.*
>
> *10.The assessee are further directed to produce at the time of showing cause all the documents and evidences upon which they intend to rely in support of his defense.*
>
> *11.The assessee should indicate in their written reply as to whether they desire to be heard in person before the case is adjudicated. If no mention is made in the written reply to the show cause notice, it would be presumed that they do not desire to be heard in person.*
>
> *12.If no cause is shown against the action proposed to be taken within 30 days of receipt of this notice or if the assessee does not appear before the adjudicating authority when the case is posted for hearing, the case will be decided ex-parte*

13.This notice is issued without any prejudice to any other or any further action that may be taken or any further proceedings that may be initiated against the assessee under the Finance Act, 1994 and rules made there under or any other law for the time being in force and enforceable in India

14.The department reserves the right to add, amend, modify delete any part or portion of this notice and any such addendum, amendment, modification, deletion if made, shall be deemed to be part and parcel of this notice

15.The above provisions of the Finance Act, 1994 and the rules made there under are invoked as per the enabling provisions under Section 174 of the central Goods Services Tax Act, 2017."

7.Since the petitioner failed to respond to the same, the first respondent, namely the Deputy Commissioner of GST and Central Excise, Trichy passed the Order in Original No.71/22-ST dated 15.03.2022 bearing Ref.C.No.IV/19/75/2020-ST-ADJN, whereby the demand proposed in the aforesaid show cause notice was confirmed and accordingly, the petitioner was called upon to pay a sum of Rs.7,30,450/- together with interest and penalty of equal amount under Section 78 of the Finance Act, 1994. In the aforesaid order, the petitioner was also imposed penalty of Rs.10,000/- under Section 77(2) of the Finance Act, 1994. Operative portion of the order reads as under:

> *"i) I demand Service Tax of Rs.7,30,453/ (including Cess) (Rupees Seven lakhs thirty thousand four hundred and fifty only) from M/s KA RAMDAS, Trichy for the period from April 2015 to June 2017 under proviso to Section 73 (1) of the Finance Act, 1994*
>
> *ii) I demand appropriate interest on the Service Tax liability demanded at Sl. No. (i) from M/s KA RAMDAS under Section 75 of the Finance Act, 1994,*
>
> *iii) I impose a penalty of Rs 7,30,450/ on the assessee under the provisions of section 78 of the Finance Act, 1994, and M/s KA RAMDAS are informed that the penalty payable under Section 78 of the Finance Act, 1994 shall be 25% of the Service Tax amount determined as in Sl No (i) above, if the Service Tax as determined under Sl No (i) and interest as confirmed in Sl No (ii) above, along with the reduced penalty amount is pad within a period of 30 (Thirty) days of the date of receipt of the Order-in-Original, in terms of the second and third proviso to Section 78 of the Finance Act. 1994*
>
> *iv) I impose a penalty of Rs.10,000/ under the provisions of section 77 (2) of the Finance Act, 1994."*

8.Since the petitioner's appeal has been admitted by the Appellate Commissioner against the Order in Original No.71/22-ST dated 15.03.2022 bearing Ref.C.No.IV/19/75/2020-ST-ADJN vide communication dated 26.09.2023, I am inclined to *suo motu* implead the Commissioner of GST and Central Excise (Appeals), No.1, Williams Road, Cantonment, Trichy as fourth respondent.

9.The fourth respondent/the Commissioner of GST and Central Excise (Appeals) is directed to dispose of the petitioner's appeal in A.No.90/2023-ST as expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order subject to the defenses that are available to the Revenue.

10.Considering the fact that the petitioner is only required to deposit Rs.54,785/-, in case an appeal was filed under Section 86 of the Finance Act, 1994, I direct the respondents to refund the balance amount of Rs.14,16,115/- (Rs. 14,70,900/- – Rs.54,785/-) to the petitioner subject to the petitioner furnishing a bank guarantee for the balance amount to secure the interest of the Revenue.

11.The Writ Petition stands disposed of, accordingly. No costs.

Index : Yes / No
Internet : Yes / No
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05.06.2024

C.SARAVANAN, J.

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