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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.A.No.302 of 2025
and
C.M.P.No.2338 of 2025

Tvl.Glo Shipping Logistics Pvt. Ltd.,
Represented by its Finance Manager,
No.2D, Glenden Place, No.310, No.813,
Next to EGA Theatre, Indian Bank,
Poonamallee High Road, Kilpauk,
Chennai, Tamil Nadu – 600 010. ... Appellant

Vs.

The State Tax Officer,
Kilpauk Assessment Circle,
No.1, Greams Road, 3rd Floor,
PAPJM Annex Building,
Chennai, Tamil Nadu – 600 006. .. Respondent

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.11.2024 in W.P.No.33358 of 2024 on the file of this Court.

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For Appellant : M/s.Aparna Nandakumar

For Respondent : Mr.C.Harsharaj
Additional Government Pleader

JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge dated 12.11.2024 in W.P.No.33358 of 2024.

2.Brief facts that are necessary for the disposal of this Writ Appeal are as follows :

The appellant is a Private Limited Company carrying on carrier services specializing in both full container load and less than container goods (grouped shipments). The appellant is also registered under GST Act and has filed its return and paid appropriate Taxes for the period 2019-20. On the basis of the information furnished in the report under various heads, the Department pointed out a few defects and hence, a Show Cause Notice was issued in Form GST DRC-01, dated 21.05.2024, proposing a demand of

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Rs.21,77,261/- under Section 73 of respective GST enactment, apart from interest, penalty, fee, etc. In response to the Show Cause Notice, a reply was submitted by the appellant. After receipt of explanation, an order was passed by the respondent on 31.08.2024 under Section 73 of the GST Act, demanding a sum of Rs.98,83,029/-.

3.The said order was challenged before this Court by the appellant in the writ petition in W.P.No.33358 of 2024 mainly on the ground that the impugned order is in violation of principles of natural justice and without jurisdiction relying upon Sub-Section (7) of Section 75 of respective GST Act. It was contended by the writ petitioner that the amount, interest and penalty imposed in the final order cannot be in excess of the amount specified in the notice and no fresh demand shall be made on the ground other than the grounds specified in the notice. It was further contended that the amount in excess was based on reversal of excess Input Tax Credit.

4.Learned Single Judge, though accepted the argument that the order is in violation of principles of natural justice, while setting aside the order

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impugned therein, remanded the matter by holding that the order impugned should be treated as a Show Cause Notice, to which, the writ petitioner should submit its reply within three weeks from the date of receipt of a copy of the order, also with a caveat that, if no reply is filed within three weeks, the order impugned before the Writ Court will stand restored.

5.Aggrieved by the nature of order passed by the learned Single Judge, the above Writ Appeal has been preferred by the writ petitioner.

6.Relying upon Sub-Section (7) of Section 75 of the respective GST enactment, the learned counsel for the appellant submitted that the demand in the impugned order cannot be in excess of the amount specified in the Show Cause Notice. She also pointed out that the original Show Cause Notice is confined to Rs.21,77,761/- which is in respect of a reduction claimed on the basis of notification regarding Input Tax Credit. However, the impugned order directing the appellant to pay a sum of Rs.96,83,029/- is by treating the appellant as an “Intermediary” relying upon a few facts, of course, furnished by the appellant themselves. The learned counsel

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appearing for the appellant expressed her grievance that a fresh Show Cause Notice on the issue based on which the impugned order came to be passed, will be time barred in terms of Section 73 of the respective GST enactment.

7.However, question of limitation coupled with an issue relating to jurisdiction is to be decided based on certain factual aspects which can be canvassed before the respondent. Since an opportunity is given by the learned Single Judge, it is open to the appellant to raise all its defence in the reply before the respondent.

8.The learned counsel appearing for the appellant is also concerned about the further direction of the learned Single Judge to the effect that the impugned order of assessment will stand restored in case the appellant does not file any reply within three weeks time. Since the appellant has filed this Appeal, the reply as directed by the learned Single Judge was not filed. Therefore, the learned counsel also prayed for extending the time or to set aside that portion of the order.

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9.Having regard to the facts, this Court is of the view that the further observation of the learned Single Judge giving scope for restoration of the order in case no reply is filed within three weeks, may not be appropriate. Therefore, the order of the learned Single Judge is set aside to that extent. It is open to the appellant to submit their reply within a period of four weeks from the date of receipt of a copy of this judgment. It is also open to the appellant to raise the question of limitation as well as jurisdiction as contended before this Court.

10.Accordingly, this Writ Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (C.S.N., J.)
26.03.2025

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To

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