IN THE HIGH COURT OF JUDICATURE AT MADRAS
26.03.2025
Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10338 of 2025
and
W.M.P.Nos.11650 & 11651 of 2025

Shield Healthcare Pvt. Ltd.,
(formerly Nutri Synapzz Therapeutix Pvt. Ltd.,)
Rep. by its Authorized Signatory,
Gowrishankar V. ...Petitioner

Vs.

The Assistant Commissioner,
Shollinganallur Assessment Circle
2nd Floor, Room No.218,
The Integrated Building for Commercial Taxes
and Registration Department (South Tower)
Nandanam, Chennai – 35. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the respondent in the impugned order dated 18.04.2024 in Form GST -DRC 07 bearing Ref.Number ZD330424149356F passed by the respondent and to quash the same as arbitrary.

For Petitioner : Mr.V.Veeraraghavan
For Respondent : Mr.C.Harsha Raj

Special Government Pleader (T)

Order

Heard Mr.V.Veeraraghavan, learned counsel appearing for the petitioner and Mr.C.Harsha Raj, learned Special Government Pleader (T) who takes notice on behalf of the respondent. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the order passed by the respondent dated 18.04.2024 in Form GST -DRC 07 and to quash the same as arbitrary.

3. The learned counsel for the petitioner would submit that a Scheme of Amalgamation was entered into between the petitioner-Company and Nutri Synapzz Therapeutix Pvt. Ltd., by virtue of the same, the said Company got merged with the petitioner-Company w.e.f. 01.10.2018 and the same was also informed to the respondent-GST Department, while applying for cancellation of GST registration of the transferor-Company and the respondent also issued an order for cancellation of the registration of the transferor-Company and quantified the outstanding tax liability as NIL as on the date of cancellation of registration; that thereafter, after a lapse of four years, the respondent has issued notice in Form GST -DRC-01 along with detailed notice dated 27.12.2023, in the name of the transferor-Company pertaining to the assessment year 2018-19, pointing out certain discrepancy and demanding tax liability. The learned counsel for the petitioner mainly contended that when the said transferor-Company itself is no longer in existence, as per the SoA, initiation of any future proceedings against the said transferor-Company is non-est in law and thus, prayed for setting aside the impugned order.

4. The learned Special Government Pleader (T) for the respondent submitted that let the petitioner shall consider the notice issued to the transferor-Company and the impugned order as notice issued to the petitioner-transferee-Company and shall file reply and participate in the proceedings.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. Admittedly, as per the Scheme of Amalgamation dated 01.10.2018, the Company, named "Nutri Synapzz Therapeutix Pvt. Ltd.", got merged with the petitioner-Company, viz., Shield Healthcare Pvt. Ltd. Thereafter, the petitioner-transferre Company has applied for cancellation of GST registration in respect of the said transferor-Company. In pursuance of such application, the respondent-GST Department also issued order for cancellation of registration of the transferor-Company, by quantifying the outstanding tax liability as NIL as on the date of such cancellation.

6.1 Now, the grievance of the petitioner is that, after a lapse of four years from the date of such cancellation, the respondent has issued a notice in the name of the transferor-Company, pointing out certain discrepancy, which was later followed by a show cause notice and three reminders; that since the transferor-Company failed to file reply to any of such notices, the respondent proceeded to pass order dated 18.04.2024.

6.2 Thus, the petitioner assailed the impugned order primarily on the ground that when the transferor-Company is no longer in existence, as it got merged with the petitioner-transferee-Company, and when the respondent-Department themselves cancelled their registration declaring their liability as NIL, any future proceedings initiated in respect of the transfer-r-Company is non-est in law.

6.3. Be that as it may, this Court would like to point out that if, according to the respondent-GST Department, there is any tax liability pending against the transferor-Company, they ought to have initiated the proceedings as against the petitioner-transferee-Company, inasmuch as, by virtue of the Scheme of Amalgamation, the petitioner-transferee-Company would have obviously, undertaken to settle all the claims/dispute that may arose in respect of the transferor-Company, however, the respondent failed to do so. Hence, as rightly suggested by the learned Special Government Pleader, the petitioner-transferee-Company may treat the notice issued to the transferor-Company and the final order passed as against the transferor-Company as notice issue to them and shall file reply and participate in the proceedings.

6.4 Accordingly, this Court is inclined to pass the following order/direction:-

i) The impugned order passed by the respondent dated 18.04.2024 is set aside.

ii) ii) Consequently, the matter is remanded to the respondent for fresh consideration.

iii) The petitioner-transferee-Company is directed to treat all the show cause notice, reminder notices and the impugned order issued to the erstwhile transferor-Company as notice issued to them and shall file reply along with supportive documents within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereupon, the respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.\

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.03.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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