

WP(MD) No.28502 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON
28.11.2024

PRONOUNCED ON
28.01.2025

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**W.P.(MD)No.28502 of 2022 &
WMP.No.22506 & 22507 of 2022**

M/s.Annai Angammal Arakkattalai (Pre Mahal),
Rep., by its Chairman and Trustee Mr.V.Veerappan,
No.62, NH-7, New Bye Pass Road East,
Karur – 639002.

... Petitioner

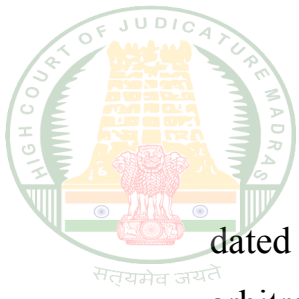
vs.

1.The Joint Commissioner or GST (Appeals), Coimbatore,
O/o the Commissioner of GST & Central Excise (Appeals), Coimbatore
Circuit office at No.1 Williams Road, Contonment,
Trichirapalli – 620 001.

2.The Assistant Commissioner of GST & Central Excise,
Karur Division,
At No.15, I Floor Gowripuram Extension,
Anna Nagar, Karur – 639 002.

... Respondents

PRAYER :- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records in the order passed by the second respondent in Order-in-Original in Order No.02/2022-GST ADJN dated 23.02.2022 and the order-in-appeal No.69/2022-TRY(GST),



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dated 29.07.2022 passed by the 1st respondent and quash the orders as arbitrary and illegal or pass any other Writ order or direction.

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For Petitioner : Mr.Joseph Prabhakar

For Respondents : Mr.R.Gowri Shankar, Standing Counsel for RR1&2

ORDER

This writ petition has been filed challenging the order in original dated 23.02.2022 and order in Appeal dated 29.07.2022 passed by second respondent and confirmed by the first respondent respectively that demanded the petitioner to pay GST liability along with interest and full penalty for GST liability.

2. Heard Mr.Joseph Prabhakar, learned counsel appearing for the petitioner, and Mr.R.Gowri Shankar, learned Standing counsel appearing for the respondents .

3.Mr.Joseph Prabhakar, learned counsel for the petitioner submits that the petitioner is the charitable trust having registered office at Karur. Under the said trust petitioner runs a marriage hall under the name and style of

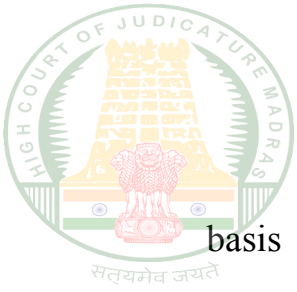


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M/s.Prem Mahal at Kovai Road. He submits that the petitioner registered as service provider under CGST Act w.e.f. 14.02.2020.

4. He contends that the CGST department preventive unit visited marriage hall on 23.01.2020 and asked to handover entire accounts and records. Hence, the manager of the petitioner submitted the same. Further, on summon the petitioner submitted ITR, Balance Sheet and Profit and Loss account upto 31.03.2019 along with bank statement of the Trust and Trustees. Moreover, the petitioner specifically stated that some amounts are reimbursable to the persons concerned.

5. He submits that on perusal of the documents the GST authority of Preventive Unit arrived at a receipt of Rs.3,86,36,410/- for the marriage hall from July, 2017 to January, 2020. He further submits that in the meanwhile, the petitioner paid a sum of Rs. 58,93,702/- as GST liability and a sum of Rs.8.84,056/- as penalty liability under cum-tax basis method applying Rule 35 of CGST Rules. He contends that the second respondent issued show cause notice dated 31.12.2021 arriving a sum of Rs.69,54,554/- as GST liability for the total value of Rs.3,86,36,410/- and rejected the cum-tax



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basis benefit claimed by the petitioner. Further, demanded balance GST liability of Rs.10,60,852/- along with interest and full amount of GST liability as penalty ie.Rs.69,54,554/-. He submits that the petitioner gave a reply on 12.01.2022, to justify the application of cum-tax basis method and objected the interest and to invoke Section 74(1) CGST Act that the petitioner neither suppressed any payments nor willfully misrepresented. He submits that the total value arrived by the second respondent includes advance, reimbursable amount and GST. He contends that the second respondent assumption is against the basic principles of indirect taxation and the petitioner is not liable to pay service tax as it is agent of government which has to be paid by the person concerned.

6.He further submits that after submission of objection by the petitioner the second respondent passed an order in original dated 23.02.2022, demanding balance GST liability of Rs.10,60,852/- along with interest and full amount of GST liability as penalty ie.Rs.69,54,554/-. Thereby, the second respondent invoking Section 74(1) of CGST Act rejected the petitioner claim of cum tax basis benefit was rejected. He expostulates that the second respondent had not even established the



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petitioner involved in fraud or willfull misstatement or suppression of facts
available to invoke section 74(1) of CGST Act.

7.He submits that against the order in original, the petitioner preferred appeal before the first respondent. The petitioner contend that tax element is included in the total value of taxable supply and petitioner is entitled to arrive GST liability applying cum tax basis under Rule 35 of CGST Rules 2017. Further, contended that no penalty shall be levied since the petitioner already discharged full tax liability as per Section 73(8) of the Act even before the initiation of proceedings. The first respondent confirmed the order in original vide dated 29.07.2022.

8.He further contends that on knowing that the petitioner is a supplier of service attracting GST liability forthwith registered on 14.02.2020 under GST Act, 2017. He further submits that non registration is neither willful nor wanton. He further contends the the judgments relied upon by the first respondent in order in Appeal are inapplicable to the case of the petitioner since the petitioner was cooperating with the respondents. Further, he submits that the petitioner admitted the total value only in order to buy



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peace. The petitioner engaged other person to provide service and paid them. Hence, the total value of receipt is not reliable. He expostulates that the second respondent would not have issued notice under Section 73(1) when tax liability and penalty is paid or otherwise the second respondent would have issued notice only for the short fall amount.

9.He further submits that section 122(2) (b) of CGST Act penalty applies for registered entity and not the petitioner which is not registered at the time of visit by the respondents. Further, he submits that for non registered entity penalty of Rs.10,000/- can be levied under Section 122(1) of the CGST Act. For the aforesaid contentions the petitioner seeks the interference of this court in the order in original and the order in Appeal.

10.Countering the arguments of the petitioner, Mr.R.Gowri Shankar, learned counsel for the respondents submit that the petitioner was rendering taxable activities such as renting of marriage hall and other related taxable supply. Based on specific intelligence, an investigation was caused in the petitioner premises on 23.01.2020 by the Preventive Unit. Thereby it is found that the petitioner neither registered with the GST Department nor



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discharged the GST liability. He submits that as per Section 22(1) CGST

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Act, 2017, Tax payer must have registered themselves with GST Dept w.e.f.

01.07.2017. Further, he submits that based on incriminating documents and depositions of the petitioner and few clients, the GST liability was arrived to a tune of Rs.69,54,554/- for the period July, 2017 to January, 2020. Then the petitioner registered with the GST department w.e.f. 14.02.2020 i.e. approx. more than 20 days from the date of initiation of department proceedings/ investigation. Thereafter, the petitioner computed GST liability on cum-tax basis and discharged GST liability of Rs.58,93,702/- and penalty a sum of Rs.8,84,056/- on 03.08.2020.

11.He further submits that Show cause Notice No.7/2021 dated 31.12.2021 was issued to the petitioner under Section 74(1) of CGST Act, 2017 demanding the entire GST liability of Rs.69,54,554/- along with interest, penalties. He further contends that after due process of law, the second respondent who is the original Adjudicating Authority issued Order in Original in Original No.02/2022-GST Adjn dated 23.02.2022. Thereby, the second respondent rejected the claim of cum-tax valuation method and confirmed the demand of GST Rs.69,54,554/- with interest, appropriated



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amount of Rs.58,93,702/- and penalty of Rs.69,54,554/-, appropriating
penalty Rs.8.84,056/- under Section 122(2) (b) of CGST Act, 2017.

12.He further contends that the petitioner preferred an appeal before the first respondent under Section 107 of CGST Act, 2017. After due process of law, the Appellate Authority passed Order-in-Appeal No. 69/2022-TRY(GST) dated 29.07.2022 and upheld the order in Original and rejected the appeal filed by the petitioner. He further contends that Show cause notice was properly issued since because the petitioner not paid the full GST liability along with interest and penalty. He expostulates that as per section 73(8) of CGST Act, no penalty shall be levied since the petitioner has already discharged the full tax liability which is false and misleading. He further submits that the petitioner neither produced any evidence to prove the amount collected was inclusive of taxes nor the formal agreement was entered with their clients to treat under cum-tax value.

13.He contends that the petitioner had received huge amount of rents without obtaining GST registration, not paid GST, not filed statutory GST returns during July, 2017 to January, 2020 and hence cum-tax benefit was

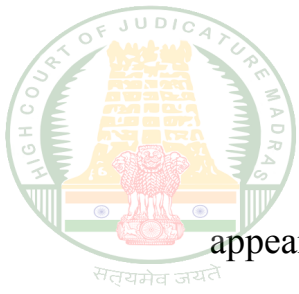


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not extendable for the petitioner. Particularly, in this case there is a willful mis declaration and suppression of facts and hence the benefit of cum-tax benefit cannot be extended to the petitioner and he relied upon judgments to support his contentions. He further contends that the petitioner gave donation receipts for the amount they received for their service and not provided receipt for all other service clearly substantiate that the petitioner with willful intention suppressed the fact and evade tax payment. He contends that the electricity supply for renting premises is a composite supply and therefore, the rate of principal supply on renting of immovable property would be applicable. Further, it is submitted that for reason of fraud or any willful misstatement or suppression of facts to evade tax occurred as per Section 122(2)(b) of CGST Act, penalty shall be equal to ten thousand rupees or the tax due from such person, whichever is higher. Hence, the petitioner was imposed with their tax liability amount as penalty. By contending the above said reasons, the respondents submits that the order-in-Original and order-in-Appeal are good in law and not requires any interference of this court. Therefore, he prays to dismiss the writ petition.

14.I have considered the submissions made by the learned counsels



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appearing for their respective parties and perused the materials available on

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15.The entire claim against the petitioner had arisen of its own failure to register itself under the GST Act as required under law. Only pursuant thereto, the petitioner had remitted the tax that he is liable to pay. Even though, such action is claimed to be a voluntary payment by the petitioner, it should be seen that the petitioner had attempted to evade payment of tax which is liable to be taxed and only pursuant to the inspection effected by the respondent, the petitioner had submitted himself for payment of tax and hence, the same cannot be said to be a voluntary payment and has been made only to wriggle out of the penal consequences. This conduct of the petitioner to evade tax will also fall under suppression and fraudulent activities envisaged under Section 74 of the GST Act. Hence, the contention that Section 74 cannot have been invoked against the petitioner cannot be countenanced.

16.A perusal of the orders in original, as affirmed by the Appellate Authority would clearly indicate that there is a deliberate attempt to evade



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payment of tax by not registering himself under the Act and also issuing receipts as donation to the Trust. Only after the inspection they have agreed to pay the tax by registering themselves. This conduct cannot be said to be a voluntary conduct. There has been contraventions of provisions of the GST Act for which the petitioner is liable to make good the non-payment and also suffer penal consequences for the same.

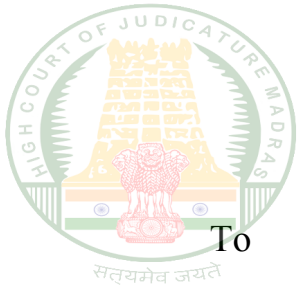
16. Both the Original Authority as well as the Appellate Authority have considered the case of the petitioner in its proper perspective and had applied the Provisions of law on the issue in its right perspective which do not call for any interference by this Court.

17. In fine, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

28.01.2025

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba

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To

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A Pre-delivery order made in
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