IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-03-2026

CORAM

THE HON'BLE MR JUSTICE C. SARAVANAN

WP No. 26417 of 2022

and W.M.P.No.25498 of 2022

M/s.Shri Mahalakshmi Metal Mart
Rep. by its Proprietor B.C. Saravanan, Shop No.9,
JagadeviRoad, Bargur-635 104, Krishnagiri District.

..Petitioner(s)

Vs

1. The Joint Commissioner of (Appeals) GST and Central Excise, (Coimbatore), No.1, Foulkes Compound, Anaimedu, Salem-636 001.
2. The Deputy Commissioner of GST and Central Excise, Hosur I Division, Thally Road, Hosur-635 109.

..Respondent(s)

Prayer: This petition is filed under Article 226 of the constitution of India calling for the records relating to demanding of GST of Rs. 11,43,418/-, imposing a fine of Rs. 46,84,730/- and imposing Penalties of Rs. 1,14,342/- and Rs.11,43,418/- apart from demanding interest by the first Respondent and quash the said Order-In-Appeal No. 20/2022-GST(SLM) dated 19/04/2022 passed by the 1st Respondent as erroneous

For Petitioner : Mr.T. Ramesh

For Respondent(s): M/s. K.S. Ramaswamy, Senior Standing Counsel

ORDER

The petitioner is before this Court against the impugned order passed by the first respondent in Order No.20/2022-GST (SLM) dated 19.04.2022 in Form GST APL -04.

2. I have considered the argument advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

3.It is noticed that the petitioner has filed this writ petition on 26.09.2022. The petitioner had an alternate remedy to file an Appeal before the GST Appellate Tribunal under Section 112 of the GST enactment. However, the GST Appellate Tribunal was not a reality and it had not been notified. Even as on date, though it has been notified, it has not been fully constituted. Considering the same I shall take up to proceed the writ petition and dispose the same on merits.

4. By the impugned order the petitioners Appeal No.155/2021 dated 30.12.2021 against the Order in Original No.06/2020-2021 dated 24.12.2020 passed by the office of the second respondent has been rejected. The said order in Original No.06/2020-2021dated 24.12.2020 itself came to be passed in the background of the Show Cause notice issued to the petitioner in serial No. 1/2019/3499 dated 15.11.2019. By the aforesaid order in Original dated 24.12.2020, the following demand was confirmed:

> *(i) I order to confiscate the goods seized vide Mahazar dated 25.05.2019 at the premised at Shop No.1, Krishnagiri Main Road, Bargur 635 104 Valued Rs.58,28,248/- in terms of Section 130(1)(ii) of CGST Act, 2017;*
>
> *(ii) I impose a fine of Rs.46,84,730/- (Rupees Forty-Sixlakhseight four thousand seven hundred and thirty) on the tax payer in lieu of confiscation under the first provisio to Section 130(2) of CGST Act, 2017;*
>
> *(iii) I confirm the demand of Rs.11,43,418/- - (Rs.5,71,709/- CGST and RS.5,71,709/- SGST) (Rupees eleven lakhs forty-three thousand four hundred and eighteen only) along with (i) appropriate interest in terms of Section 50 of the CGST Act, 2017 and (ii) a penalty of RS.1,14,342/- (Rupees one lakh fourteen thousand three hundred and forty-two only) under Section 73(9) of CGST,2017; I order the tax payer to pay the same forthwith.*
>
> *(iv)I impose a penalty of Rs.11,43,418/-) (Rupees eleven lakhs forty-three thousand four hundred and eighteen only) on the tax payer under Section 122(xi) and (xvi) of CGST Act, 2017.*

5. The reasons for coming to the above conclusion has been captured in the aforesaid order and the same is extracted hereunder:

> 19. *On a careful reading of the submission dated 23.03.2020 furnished by the taxpayer, I find that the seized goods were purchased under proper invoices. The taxpayer defends that he did not register the additional place of business due to ignorant of law and declares that he has not cleared any good from the additional place of business to the customers. However, the taxpayer could not place genuine evidence in this regard. As the goods are stored in the godown (additional place of business, it is a general practise that the customers are allowed to visit the godown to choose the product as per their will and wish taking into consideration of the brand, quality, model, color etc., of their own choice. Once the customer chooses a particular product as per his choice, it is cleared from the godown to supply the same to the customer. The tax payer contends that the billing is done, in their principle place of business. Presuming that it is happening so also, as per the law, he has to maintain proper accounts in the additional place of business, which he has not done so as required under the provisions of Section 35 of the CGST Act, 2017. At this juncture, the possibility of clearance without proper accounting and evasion of tax cannot be ruled out. In this regard, I find that the taxpayer has not submitted any evidence that such evasion of tax was not happened. Had the taxpayer had not intention to evade the payment of tax, he would have registered the additional place of business. Similarly had the taxpayer registered the additional place of business. He would have accounted every product under proper invoices.*

6. It is in this background confiscation has been ordered under section 130(1) (ii) of the CGST Act, 2017, and the petitioner has been imposed with a fine of Rs.46,84,730/- under section 130(2) of CGST Act, 2017, and imposing penalties of Rs.11,14,342/- under Section 73(9) of CGST Act, 2017,

and further additional penalty of Rs.11,43,418/- under Section 122(xi) and (xvi) of CGST Act, 2017.

7. The facts of the case are that the petitioner is a dealer in second hand electronic goods and had purchased damaged items in an auction from Kerala. The petitioner was holding GST Registration for the premises at No.9, Dorai's Mahal, Jagadevi Main Road (Near Hotel Agni), Bargur, Krishnagiri 635 104. Since the large quantum of items were purchased by the petitioner under an auction which is said to have taken place in Kerala, the petitioner claims to have stored them in Shop No.1 Krisgnagiri Main Road, Burgur. This place was not registered as an additional place of business of the petitioner in the GST Registration. It appears that inspection had taken place on 25.05.2019 at about 11:30 hours and statements were recorded from the proprietor wherein, there was an admission by the petitioner that the petitioner had not obtained a lease nor produced any lease agreement for the premises from where the goods were found. This led to the issuance of the above mentioned show cause notice which has culminated into the above mentioned original order which stand confirmed vide impugned order. *Post hoc* the petitioner also obtained registration for the additional place of business by making suitable amendment to the GST Registration on 30.09.2019.

8. The Records reveal that pursuant to the inspection held on 25.05.2019 seizure was also ordered and an seizure order was passed in FORM GST INS-02, wherein the closing stock statement as on 25.05.2019 was arrived at 18,319 units for an approximate value of Rs.27,50,000/- purchased by the petitioner through auction and which is extracted below:

CLOSING STOCK STATEMENT as on 25.05.2019		
S.L.No.	Particulars	Closing Stock
1	Air Conditioner	260
2	Vaccum Flask	1752
3	Gas Stove	2546
4	Air Cooler	301
5	Cooker	4020
6	Iron Box	1575
7	Mixer Grinder	814
8	Washing machine	193
9	Tower fan	15
10	Television	52
11	Water bottle	4200
12	Television Kit	356
13	EnamuleCassarele	625
14	Biriyani pot	151
15	Set top box	150
16	DVD player	174
17	Chappathi maker	147
18	Hair Dryer	315
19	Idli cooker	136
20	Home theatre	103
21	Floor mate	125

22	Torch light	201
23	Vaccum cleaner	108
	Total	18,319

9. The petitioner's failure to succeed before the Original Authority prompted him to prefer and appeal against the Order in Original No.06/2020-2021. The first respondent as an appellate authority has dismissed the appeal by affirming the conclusion in the impugned order with the following observations:-

> *7.Further the appellant's claim that the seized goods were purchased under proper invoices does not fulfil the compliance when the proper invoicing has not been done by the appellant for removal from the place of business to the unregistered premises at No.1,Krishanagiri Road, Bargur. On the demand of GST Rs.11,43,418(CGST Rs.5,71,709/; SGST Rs.5,71,709/-) It is observed that the Notice issuing Authority and AA have proposed and confirmed the demand of GST on the goods as the appellant had failed to account for the goods and so liable to pa tax on such goods as if such goods have been supplied by the person. As the appellant has suppressed the facts regarding storing the goods at unregistered premises and not maintained proper record of stock of goods at the place where such goods were stored i.eNo.1,Krishanagiri Road, Bargur and have also failed to declare the additional place of business in their existing registration, the AA has held that the unaccounted goods seized from the unregistered premises is liable for penalty under Section 130 (1)(ii) of CGST Act 2017 and also liable for penalty under Section 122(1) bid. On carefully going through the submissions as well as records of the case, it is observed that the goods were seized during search by the investigation officers as at the time of search,*

records of stock or receipt werenot provided and the said godown was also no mentioned/added in the registration certificate as an additional place of business. The proprietor of the appellant firm has also accepted that he has not added the said godown in the Registration certificate as it was taken on temporary basis so was not aware of including it as additional business premises in their registration certificate. As per the provisions contained in Section22,28 of CGST Act, 2017 and Rule 19 of CGST Rules, 2017 it is mandatory to every person who wants taxable supply of goods to obtain registration under the GST Act. Further it has been provided that where any registered person wants to change the information furnished at the time of registration or subsequent thereto, he will within a period of 15 days of such change, submit an application through common portal alongwith all relevant documents. Further it has also been provided in Section 35 of CGST Act that every registered person shall keep and maintain the true and correct account at his principal place of business, as well as any other place of business which has been specified in his certificate of registration. Thus maintaining and keeping of records are statutory requirement and it has to be followed by taxpayers. However, the appellant have failed to include the godown as additional place of business in their Registration Certificate and also failed to maintain records at the godown and produce it before the investigating team. In view of the non-compliance of the said provisions, the entire stock of the said goods automatically become unaccounted which were lying at the said premises. So the goods held as liable to confiscation under Section 130(1) (ii) of CGST Act, 2017 by the AA is in order.

08. Though the appellant have produced the copies of purchase of invoices as received from one supplier M/s Innovative Technologies, Kerala (GSTIN32AAFF17526L1Z8) and consigned to the appellant registered address at Jagadevi Roa, Bargur there is no mention about consigning/delivering at the premises No.1, Krishnagiri Road, Bargur. It is also noticed that the appellant have subsequent to investigation, and only prior to

Show Cause Notice have included the godown address in their Registration Certificate as additional premises. Though they have claimed in appeal, that they had applied through portal for registered such premises, their submissions that they were ignorant of claim. Further their claim that the additional place of business was not added to suchregistration and they could not include the premises in the GST registration online due to failure of system is not acceptable in the absence of proof towards the same. If there was any system failure they should have been provided evidence to such effect, with the relevant ticket number raised with the Grievance Redressaal portal. So the demand of appropriate GSt Rs.11,43,418/- in the impugned order on the goods cleared to the unregistered premises No.1, KRishnagiri Road, Bargur, adopting 110% of the purchase price is sustainable.

09. Penalty of Rs.1,14,341/- has also been imposed by the AA under Section 73(9) of CGST Act, 2017 but the appellant have claimed no such proposal is found in the Show Cause Notice. The Show Cause Notice proposes the tax amount of Rs.11,43,418/- to be demanded under Section 35(6) read with Section 73(1) of CGST Act,2017 & Rules 36 of CGST Rules, 2017 and penalty under Section 122(x) and (xvi) bid have been proposed. So the intent to impose penalties has been made in the Show Cause Notice through specifications Section 73(9) bid was not discussed. The numbering of wrong sub-section by the AA in a portion of the order could not be ignored considering the notice and order in totality. Notwithstanding the above, even if non-specification of the Section of Rule in the notice is sought to be claimed by the appellant, it is observed that in the case of CCE Vs Lanjekar Sales Corporation reported in 2007(5) STR 272 (Tfi) it was held by the Hon'ble Tribunal that quoting of wrong section or rule in Show Cause Notice or order not fatal as long as nature of violation correctly brought out. This was supported by the Supreme Court in the case of CCE Vs Pradyumma Streel LTd reported in 1996(82) ELT441 (S.C) and the CESTAT Chennai in the case of LVR & Dong-

in-stone LTd Vs CC 1994 (72) ELT377(Tri). So the claim of the appellant in this regard is not maintainable.

10.On the penalty imposed under Section 122(1) (Xi) and (XVi), the said provisions enable imposing penalty equal to the tax evaded if not registered under GSt Act and for not maintaining proper accounts/records. The appellant have claimed that the provisions of Section 122(1) (xvi) is invokable only in cases where a taxpayer fails to obtain registration though he is liable to get registered through CGST Act 2017, and as they are already registered the above provisions are not applicable. As per the provisions of Section 22,28 of CGST Act, 2017 and Rule 19 of CGST Rules, 2017, it is observed that it has been mandatory for every person who wants taxable supply of goods or service obtain registration under the GST Act. It has been clearly spell under Section 22 ibid that every supplier shall be liable to be registered from where he makes taxable supply of goods. It is clear from investigation that having carried out business from the subject premises No.1, Krishnagiri Road, Bargur", the appellant has contravened the said provisions in not getting such business premises registered as Additional place of business. Though they have subsequent to investigation only on 13.09.2019, applied for amendment of their registration certificate and included the said premises where goods were seized as " additional place of business" at the time of investigation it was unregistered premises and so any movement without proper invoice/records are to be considered as non-duly paid goods. It is admitted fact that they have not maintained proper records/accounts at the time of investigation and were able to produce the records of stock and purchase invoices only one month later on 24.06.2019 before the investigating officers. So AA has imposed penalty equal to the tax demanded under Section 122(1) (xi) of CGST Act, 2017 which is maintainable.

11. On the redemption fine imposed confiscation has been restored under Section 130(1)(ii) of CGST Act,2017 which specifies that the goods become liable to confiscation where any person does not account for any goods on which he is liable to pay tax under CGST Act, 2017. It is noticed that *based on the value of goods less tax involved, fine of Rs.46,84,730/- has been imposed under first proviso to Section 130(1)(ii) of CGST Act, 2017. The appellant have claimed that not including the unregistered premises in the registration certificate cannot attract the provisions of Section 130(1)(ii) of CGST Act, 2017. But it is observed that the goods were seized during the search by the investigating officers because at the time of investigation the appellant have not provided stock records and proper accounts and the said godown/premises was also not registered or added as additional place of business in their GST registration. So, there is no dispute that at the time of search operation, the said premises was not added in their GST registration. As per the provisions of Section 22,28 of CGST Act, 2017 and Rule 19 of CGST Rules, 2017, it is observed that it has been mandatory for every person who wants taxable supply of goods or service to obtain registration under the GST Act. Further it has also been provided in Section 35 of CGST Act that every registered person who wants taxable supply of goods or service to obtain registration under the GST Act. Further it has also been provided in Section 35 of CGST Act that every registered persons shall keep and maintain true and correct accounts at his principal place of business, as well as any other place of business which has been specified in his certificate of registration. On combined reading of Sections 22,28 and 35 of CGST Act, 2017 and Rules thereunder, it is evidence that obtaining registration of supply of goods and maintaining proper records are the statutory requirement which is to be followed intoto. But in this case, the appellant has failed to add the additional place of business in their registration certificate as well as he has failed to maintain and keep records of such unregistered premises and could not produce before the investigation officers. In view of the non-compliance of the said provisions, the entire stock of the said goods automatically become unaccounted which were lying in such premises. Keeping storing the goods on unregistered premises is not only a procedural mistake rather it is gross violation of the statutory provisions of the GST Act as discussed above. Had the investigating agency not conducted the search at the premises, the goods lying in the said premises would have been cleared by the appellant without payment of tax. So the AA's conclusions that the same were kept for clandestine removal with intent to evade tax cannot be disputed. Therefore, the* *appellant has contravened the abovesaid provisions of law and hence their act of omission and commission renders the seized goods liable for confiscation under Section 130(1)(ii) of CGST Act, 2017 and Rules made thereunder. So the confiscation and redemption fine imposed by AA are maintainable.*

By the impugned order dated 19.02.2022 the appeal preferred by the petitioner has been rejected.

10. The learned counsel for the respondent submits that the first respondent as an Appellate Authority cannot be found fault with as it is a well reasoned order. It is submitted that challenge to the impugned order has to fail as there are no procedural irregularities committed by the first respondent by confirming the order passed by the second respondent.

11. Perusal of the records including the seizure order dated 25.05.2019 in From GST INS -02, which was extracted above, indicates that the petitioner has not liquated the stock purchased at the time of inspection. Therefore, there is no justification in imposing huge amount of fine and penalty by ordering confiscation of the stock which was valued at Rs.58,28,148 by the Department as against the declared value of the stock for Rs.27,50,000/-

12. The Tax and Redemption fine has been demanded on the stock which were stored by the petitioner in a place which was not registered as an additional place of business. However, the said place has been subsequently registered as an additional place of business of the petitioner. The stock is still available. Therefore, there is no justification in ordering confiscation and imposition of redemption fine under the provision of CGST Act, 2017.

13. At best the petitioner should have been imposed with a general penalty under Section 125 of the respective GST Enactment Act for not obtaining GST Registration in time, instead of ordering confiscation of the seized goods with an option to pay redemption fine. Though the present Writ Petition is partly allowed quashing Impugned Order insofar as imposing of Redemption fine and tax on seized goods.

14. The petitioner is therefore directed to pay a sum of Rs.25,000/- towards each provisions of the respective GST Enactment Act towards the general penalty for a sum of Rs.50,000/-. Hence, the goods which were ordered to be confiscated are allowed to be cleared. To the extent the petitioner had already sold the goods, the petitioner is liable to tax and there shall be

redetermination of tax penalty and interest under the provision of the respective GST.

15. With the above observations and directions this writ petition is partly allowed. No costs. Consequently the connected miscellaneous petition is closed.

11-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

smn

To

1. The Joint Commissioner of (Appeals) GST
   and Central Excise, (Coimbatore), No.1, Foulkes
   Compound, Anaimedu, Salem-636 001.

2. The Deputy Commissioner of GST
   and Central Excise, Hosur I Division, Thally
   Road, Hosur-635 109.

C.SARAVANAN, J.

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