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W.P.No.34471 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.34471 of 2022
and
W.M.P.No.33919 of 2022
in
W.P.No.34471 of 2022

M/s.Vishaka Exports
Kurunji Nagar Main Road
Sheriff Colony
Tiruppur - 641 604
represented by its Partner Mr.Rajendra Kumar .. Petitioner

Vs.

Assistant Commissioner (ST) (FAC)
Tiruppur North I Circle / Tiruppur Bazaar
No.16/1, 1st Floor, Emperor Building
Indira Nagar, Avinashi Road,
Tiruppur - 641 603. .. Respondent

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing reference GSTIN : 33AAPFV2954F2ZX/2018-19 dated 22.06.2022 passed by the respondent and quash the same.



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For Petitioner : Mr.T.R.Ramesh
For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

Captioned main writ petition has been filed assailing an 'order dated 22.06.2022 bearing reference GSTIN : 33AAPFV2954F2ZX/2018-19' made by lone respondent [hereinafter 'impugned order' for the sake of convenience and clarity].

2. Impugned order has been made by lone respondent under Section 73 of 'Tamil Nadu Goods and Services Tax Act, 2017' [hereinafter 'TN-G&ST Act' for the sake of convenience and clarity].

3. Short facts are that the writ petitioner is a registered taxpayer in the books of the respondent; that according to the respondent, on verification of GSTR 3B and GSTR 1 monthly returns filed by the writ petitioner for the assessment year '2018-2019' [hereinafter 'said AY' for the sake of convenience and clarity] certain discrepancies pertaining to difference in turn over between GSTR 1 and GSTR 3B, difference



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between GSTR 3B Vs GSTR 2A, input mismatch were noticed; that owing to such discrepancies said to have been noticed by sole respondent, the impugned order came to be made; that the writ petitioner has filed the captioned writ petition assailing the impugned order.

4. In his campaign against the impugned order, notwithstanding very many averments in the writ affidavit, learned counsel for writ petitioner raised three points in the hearing and they are as follows:

(a) the impugned order was not preceded by Forms GST DRC-01 and GST DRC-01A;

(b) that no 'show cause notice' ['SCN'] was issued by the respondent before making the impugned order;

(c) that the writ petitioner has filed a rectification petition under Section 161 of TN-G&ST Act and the same is pending;

5. Owing to aforementioned submissions this writ Court considers it appropriate to issue notice. Mr.T.N.C.Kaushik, learned Additional



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Government Pleader (Taxes) accepts notice on behalf of lone respondent and learned Revenue counsel submits that he has instructions.

6. Owing to the narrow compass on which the captioned main writ petition turns, a counter affidavit from the respondent is really not necessary more so, as the learned Revenue counsel has instructions. In this scenario, with the consent of both sides i.e., learned counsel for writ petitioner and learned Revenue counsel, main writ petition was taken up and heard out.

7. As regards the first point i.e., the impugned order not being preceded by Forms GST DRC-01 and GST DRC-01A, learned counsel for writ petitioner pressed into service an order dated 21.09.2021 returned by me in W.P.No.19756 of 2021 and WMP No. 21034 of 2021 [*Shri Tyres Vs. State Tax Officer*]. According to learned counsel for writ petitioner, under some what similar circumstances, in the aforementioned *Shri Tyres* case, I had interfered with the impugned order thereat. Learned Revenue counsel points out that there is an amendment to Rule 142 of



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'Tamil Nadu Goods and Services Tax Rules 2017' [hereinafter 'TN-G&ST Rules' for the sake of convenience and clarity] which kicked in on and from 15.10.2020 wherein under sub-rule (1A) of Rule 142 of TN-G&ST Rules, the expression '*proper officer shall*' has been amended to read as '*proper officer may*'.

8. A careful perusal of the obtaining provision brings to light that the submission of learned Revenue counsel is correct. Therefore, as regards my order in *Shri Tyres* case supra, applying the time honoured classical celebrated principle that while it is a great judicial virtue to be consistent, it is a greater judicial virtue to be correct, I stand corrected. I have no hesitation in saying that *Shri Tyres* case is no longer good law as the same has been rendered in circumstances where neither learned counsel for writ petitioner / dealer nor learned Revenue counsel brought to the notice of this Court the amendment to sub-rule (1A) of Rule 142 of TN-G&ST Rules which kicked in on and from 15.10.2022. To be noted, Rule 142 has been extracted and reproduced in paragraph No.10 of *Shri Tyres* case and a perusal of the extract brings to light that what was



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shown to / placed before this Court by both sides i.e., learned counsel for writ petitioner and learned Revenue counsel in that case is Rule 142 (more particularly sub-rule (1A) of Rule 142) as it stood prior to 15.10.2020. To be noted, paragraph No.10 of **Shri Tyres** case reads as follows:

10. I carefully considered the submissions made by either side and find that the second point enures in favour of writ petitioner and the reasons are as follows:

(a) The requirements of issue of FORM GST DRC-01 and FORM GST DRC-01A have been statutorily ingrained in the rules made under the CG&ST Act i.e., Rule 142 of the CG&ST Rules, 2017, which reads as follows:

'142. Notice and order for demand of amounts payable under the Act

(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in FORM GST DRC-01,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in FORM GST DRC-02, specifying therein the details of the amount payable.



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[(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.]

(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act [whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A),] he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC-04.

[(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A.]

(3) Where the person chargeable with tax makes



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payment of tax and interest under sub-section (8) of section 73 or, as the case may be, tax, interest and penalty under sub-section (8) of section 74 within thirty days of the service of a notice under sub-rule (1), or where the person concerned makes payment of the amount referred to in sub-section (1) of section 129 within fourteen days of detention or seizure of the goods and conveyance, he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

(4) The representation referred to in sub-section (9) of section 73 or sub-section (9) of section 74 or sub-section (3) of section 76 or the reply to any notice issued under any section whose summary has been uploaded electronically in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06.

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be



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treated as the notice for recovery.

(7) Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.]'

9. As the issue is now not statutorily imperative and as it is optional at the instance of the respondent (Revenue), the first point of campaign stands doused. This takes this Court to the second point namely, SCN prior to issue of the impugned order. Dealing with erstwhile 'the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act No.32 of 2006)' [hereinafter 'TNVAT Act' for the sake of convenience and clarity] which stood subsumed by Goods and Services Tax regime which kicked in on and from 01.07.2017, this Court held that it is not imperative to issue a SCN for a revision under Section 22(4) of erstwhile TNVAT Act, 2006 unlike best judgment method revision under Section 27 of TNVAT Act wherein it is statutorily imperative to issue SCN before resorting to Section 27 of TNVAT Act. This is vide ***State Bank of India officers*** case



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law, *[State Bank of India Officer's Association (CC) - SBIOA Vs. The Assistant Commissioner, Chennai-1 in W.P.No.22634 of 2019 order dated 01.08.2019]* and the same has been upheld / sustained by a Hon'ble Division Bench. Applying the very same principle to the case on hand, this Court has no hesitation in holding that it is not imperative to issue a SCN. Learned counsel for writ petitioner points out that the impugned order records that a personal hearing was in fact held on 10.06.2022 but there was actually no personal hearing. As personal hearing is not statutorily imperative, it does not cut ice with this Court as regards the writ petitioner's campaign against the impugned order. This takes this Court to the last point i.e., rectification. Section 161 of TN-G&ST Act no doubt provides for rectification of errors apparent on the face of record at the instance of an affected person also but what is of significance is, it provides for rectification of 'errors apparent on the face of record'. Learned counsel for writ petitioner draws the attention of this Court to the rectification application filed by the writ petitioner being a communication dated 13.07.2022. A careful perusal of this communication which according to writ petitioner is a rectification



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application, leaves this Court with the considered view that it does not qualify qua errors apparent on the face of the record as it talks about output mismatch qua Forms GSTR 3B and GSTR 1 and credit notes not reversed in GSTR 3B. This may well be grounds of appeal if the writ petitioner chooses to file a statutory appeal under Section 107 of TN-G&ST Act but it cannot be gainsaid that it is an error apparent on the face of record. To be noted, the expression 'errors apparent on the face of record' has been repeatedly explained by this Court to be errors which are so obvious and so palpable (tangible if one may say so) that no inferential process is required or no inferential process need to be applied to detect the error. A careful perusal of these issues set out herein will make it clear that they may not qualify as errors apparent on the face of record but this Court refrains itself from expressing any view or opinion on the same as this Court intends to preserve the rights of the writ petitioner to prefer a statutory appeal under Section 107 of TN-G&ST Act, if the writ petitioner is so advised and if the writ petitioner is desires to do so.

10. The sum sequitur of the narrative, discussion and dispositive



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reasoning thus far leads this Court to the inevitable sequitur that the captioned main writ petition fails. However, before dismissing the captioned writ petition, it is made clear that all the rights and contentions of the writ petitioner are preserved, if the writ petitioner chooses to prefer a statutory appeal under Section 107 of TN-G&ST Act. To be noted, such statutory appeal to the Appellate Authority under Section 107 of TN-G&ST Act will be subject to limitation and pre-deposit condition, if any. As regards limitation, if the writ petitioner chooses to make a prayer under Section 14 of the Limitation Act, 1963 qua captioned writ petition, it is open to the Appellate Authority to consider the same on its own merits and in accordance with law. For further specificity, it is made clear that all questions including questions raised in the captioned writ petition are left open to be dealt with by the Appellate Authority if the writ petitioner chooses to file a statutory appeal under Section 107 of TN-G&ST Act.

11. It is pointed out by learned Revenue counsel that the aforementioned rectification application is beyond the prescribed period



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of three months but the learned counsel for writ petitioner submits that it has been filed within one month but it may not be necessary to embark upon an exercise of adjudicating upon the disputation or contestation, as this writ Court has come to the conclusion that the points raised in the rectification application do not qualify as errors apparent on the face of record.

12. The conclusion is, captioned Writ Petition is dismissed albeit preserving the rights of the writ petitioner to the limited extent indicated supra. Consequently, captioned writ miscellaneous petition is also dismissed. There shall be no order as to costs.

23.12.2022
(2/2)

Index: Yes/No
Speaking / Non-speaking order

mk

To

The Assistant Commissioner (ST) (FAC)
Tiruppur North I Circle / Tiruppur Bazaar
No.16/1, 1st Floor, Emperor Building

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Indira Nagar, Avinashi Road,
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