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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.34267 OF 2024

LJ- Victoria Properties Private Limited,
Reg. Office at 1st floor,
Embassy Point, 150, Infantry Road,
Bangalore- 560001

Formerly Located at : 4th floor, WeWork
Building, Spectrum Tower, Mind space
Chincholi Bunder Road, Malad West,
Mumbai, Maharashtra 400001
Through Mr.P R Ramakrishnan
(Authorised Signatory)

...Petitioner

Versus

1. Union of India,
Through the secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-
110001.
2. State of Maharashtra
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Mantralaya, Mumbai-400001
3. Asst. Commissioner of Sales Tax
Kandivali – West-605
Cabin No.C-04, 5th floor,
Old Building, Nodal-09
GST Bhavan, Mazgaon,
Mumbai-400010

...Respondents

Mr. Mahesh Raichandani a/w Mr. Jasmine Dixit i/b UBR Legal for Petitioner.

Mr. Himanshu Takke for Respondent Nos.2 and 3.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 13 November 2024
PRONOUNCED ON : 19 November 2024

JUDGMENT (Per Jitendra Jain J):-

1. Rule. By consent of the parties taken on production board and heard finally since only legal issue is involved.
2. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the notice dated 21 August 2024 issued under Section 65 of the Maharashtra Goods and Services Tax Act, 2017 (“SGST Act”) in Form No. GST ADT-01 read with Rule 101 of the Goods and Services Tax Rules, 2017 (GST Rules) by which the respondents seek to conduct an audit for the financial year 2020-21. Consequently, the petitioner also aims to challenge the preliminary audit findings dated 11 October 2024.

Brief facts :-

3. The petitioner was engaged in the rental and leasing services of commercial properties and other ancillary activities relating to the same.
4. On 2 March 2019, the petitioner was issued a registration certificate under the Central Goods and Services Tax Act, 2017 (CGST Act). After conducting business since then, on 27 March 2023, the

petitioner applied for cancellation of its CGST registration on the ground that they have ceased to be liable to pay tax on account of the closure of business. On 2 May 2023, the respondents passed the order for cancellation of registration, and the registration was cancelled on 1 April 2023.

5. On 6 November 2023, the respondents issued notice for conducting an audit for the period April 2021 to April 2022, although in reference, it is stated as 2020-21. The said notice was replied by the petitioner on 11 November 2023 wherein the petitioner relying upon the decision of the Madras High Court in the case of '*Tvl. Raja Stores Vs. Assistant Commissioner (ST)*'¹ submitted that since the petitioner's registration is cancelled, an audit under Section 65 of the Act cannot be conducted. However, on 21 November 2023, the respondents issued the requisition calling for various documents from the petitioner. The respondents rejected the aforesaid objection of the petitioner and stated in their e-mail dated 9 August 2024 that they would proceed with the audit and requested the petitioner to keep the required documents ready for inspection.

6. On 21 August 2024, another notice for conducting audit for the financial year 2020-21 was issued by the respondents to the petitioner. It is against this backdrop that the petitioner has filed the present petition to challenge Exhibit-A and Exhibit-B to the petition,

¹ (2023) 153 taxmann.com 657 (Madras)

which is the notice for conducting an audit for the financial year 2020-21 dated 21 August 2024 and the preliminary audit findings report dated 11 October 2024 for the said financial year.

Submissions of the Petitioner:-

7. Mr. Raichandani, learned counsel for the petitioner, submitted that since the petitioner's registration has been cancelled vide order dated 2 May 2023 and in the said order, it is stated explicitly that no amount is payable by the petitioner, provisions of Section 65 of the SGST Act which deals with audit would not be applicable. It is his submission that the provisions of Section 65 of the SGST Act would apply only to a registered person and not to a person whose registration has been cancelled. He further submits that since there is no tax due determined before or after the date of cancellation, provisions of Section 29(3) of the SGST Act would also not be applicable. Mr. Raichandani, in support of his submission, relied upon the decision of the Madras High Court in the case of '*Tvl. Raja Stores' (supra)*. We may note that no other submissions have been canvased, although, in the petition, various grounds are raised, including on merits.

Submissions of the Respondents :-

8. Mr. Takke, learned AGP for respondents nos.2 and 3, submitted that the audit is proposed to be conducted for the period

when the petitioner was a registered person and, therefore, the authority has exercised its jurisdiction correctly in accordance with the provisions of Section 65 of the SGST Act. It is his submission that even if the registration is cancelled, such a person is liable for tax or other dues determined before or after the date of cancellation as per Section 29(3) of the SGST Act. It is his submission that the decision of the Madras High Court does not apply to the facts of the present case. Mr. Takke submitted that the preliminary enquiries of the audit have already been completed, and there are *prima facie* findings of tax dues in the report. Therefore, the present petition may be dismissed.

9. We have heard learned counsel for the petitioner and the respondents. The short issue posed for our consideration is whether the provisions of Section 65 of the SGST Act dealing with audit would apply to a person who was registered under the CGST Act for the period for which an audit is ordered but who ceases to be registered on the date the audit is ordered ?

Analysis & Conclusions:-

10. Before we devolve upon our reasoning, it is apt to reproduce the relevant provisions of Section 2(13), Section 2(94), Section 29(3) and Section 65 of the SGST Act and Rule 101 of the SGST Rules.

Definitions

“ 2. (13) “audit” means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

2. (94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

Cancellation or suspension of registration

29. (1).....

(2).....

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4)

(5).....

(6).....

Audit by tax authorities

65. (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit :

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.—For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and

other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require ;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.”

“Rule 101. Audit- (1) *The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year 1[or part thereof] or multiples thereof.*

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 in accordance with the provisions of sub-section (3) of the said section.

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

11. At the outset, we wish to state that in the petition's prayer clause (a), Exhibit-A is dated 6 November 2023, whereas when we refer

to Exhibit-A, it is a notice dated 21 August 2024. Therefore, there is no notice dated 6 November 2023 at Exhibit A, which is challenged in the present petition. This creates many problems for the Court in cross-verifying the exact notice, which petitioner is challenging. The draftsman ought to have taken extra precautions to ensure that such errors do not creep into the petition, which results in the judicious time being spent by the Court on finding correct challenge moreso when the Court is hard-pressed for precious time. The counsel for the petitioner did not even point this out in the course of the hearing, and it is only when we studied the papers while dictating the order that the said discrepancy was noticed. We leave this issue at this stage and proceed to analyse the provisions of the Act.

12. Section 2 (94) of the SGST Act defines “registered person” to mean a person who is registered under Section 25 but does not include a person having a Unique Identity Number. Admittedly, in the instant case, the petitioner is a registered person under Section 25 vide certificate of registration dated 2 March 2019, but the said registration was cancelled at the petitioner’s behest on 2 May 2023. The said definition excludes a person having a Unique Identity Number. If the legislature intended to exclude a registered person whose registration has been cancelled from the ambit of Section 2(94), then same would have been expressly provided for. The fact that only a person having a

Unique Identity Number is excluded from the definition of the registered person would clearly show that for the purpose of the SGST Act, 'registered person' would include a person who at any point in time was granted registration certificate though subsequently registration may have been cancelled.

13. Even otherwise, the definition clause has to be read contextually, as provided in Section 2 itself. Therefore, in our view, the phrase 'registered person' for the purpose of Section 65 of the SGST Act and on a holistic reading of all the connected provisions which we advert hereinafter, it would mean a person who was registered at some point of time under the GST Act even though, subsequently, such registration has been cancelled. Therefore, the contention of the petitioner that for the purpose of Section 65 of the SGST Act, a registered person would not include a person whose registration has been cancelled is misconceived.

14. Section 2(13) defines "audit" to mean the examination of records, returns and other documents maintained or **furnished** by a registered person under this Act or Rules or under **any other laws** for the time being in force, for the purpose of verifying the correctness of turnover **declared**, tax paid, refund claimed and **input tax credit availed** and to assess his compliance with the provisions of this Act or the Rules made thereunder. Most of the phrases use the past tense, implying that

an audit is concerned chiefly with the documents maintained or furnished, turnover declared, input tax credit already availed, etc.. Therefore, it gives an indication of verification of records filed by a registered person in past though subsequently he has de-registered himself.

15. Even otherwise, an audit is always a post-mortem of a particular event or thing that happened in the past. An audit contemplated under Section 65 is not a concurrent audit but an audit after the event. Therefore, the phrase '***at such frequency***' in Section 65(1) would not mean that an audit should be conducted concurrently or regularly, but it is at the judicious and objective discretion of the Commissioner who authorises the audit to be conducted.

16. Section 65(1) of the SGST Act must be read along with Rule 101 of the GST Rules, which provides that the audit period to be conducted under Section 65(1) shall be a financial year or a part thereof or multiples thereof. The phrase '***for such period***' in section 65(1) qualifies the phrase '***registered person***' preceding it, and both these phrases read along with Rule 101(1), would mean that whether a person is registered or not is to be examined for the financial year/period for which an audit is conducted. In that financial year/period, a person should be registered under the GST Act. In the instant case, there is no dispute that the period for which an audit is

conducted and ordered is the financial year 2020-21 when, admittedly, the petitioner was a registered person.

17. If the contention of the petitioner that a person whose registration is subsequently cancelled is not covered by the provisions of Section 65 is accepted, then the phrase '**registered person**' read with the words '**for such period**' and Rule 101(1) would become redundant because for the financial year/period for which an audit is authorised, although a person is registered, accepting the petitioner's contention would mean that even for such a period for which an audit is conducted, a person registered for that year would have to be treated as an unregistered person. In our view, such a contention cannot be accepted and is misconceived. Neither the text nor the context supports such an interpretation or construction.

18. Section 65(2) of the SGST Act provides for conducting an audit at the place of business of the registered person. However, this sub-section of conducting an audit at the place of business is discretionary since the phrase '**may**' is used to qualify the audit venue. In the case of a person who has subsequently de-registered himself, an audit can be conducted at the place of the tax authorities. In the instant case, the notice under challenge, which is in accordance with Form ADT-01, specifies the respondents' place for conducting the audit. Therefore, to suggest that in the case of an unregistered person, an audit cannot be

conducted at the place of business, and consequently the provisions of Section 65 are not applicable is also not acceptable.

19. The objective of Section 65 of the SGST Act and more particularly Section 65(7) of the SGST Act for conducting the audit by tax authorities is to come to a *prima facie* conclusion, after giving sufficient opportunity to the noticee, about whether tax has not been paid or has been short-paid or erroneously refunded or input tax credit has been wrongly availed or utilised. If the same is detected, the proper officer may initiate action under Section 73 or Section 74 of the SGST Act. Section 65 is in aid for initiating proceedings under Section 73 or Section 74 for recovery of tax short-paid, not paid, erroneously refunded, or input tax credit wrongly availed or utilised.

20. Mr Raichandani submitted that the Respondents are not powerless in such matters because they could legitimately invoke the provisions of Sections 73 and/or 74 of the SGST Act. If this is so, then we see no bar, statutory or otherwise, to conducting an audit, which is only in aid of initiating proceedings under Section 73 or Section 74 of the SGST Act. If, after the audit, the respondents detect no circumstances warranting the initiation of recovery proceedings under sections 73 or 74 of the GST Act, parties would be better positioned.

21. Section 29(3) of the SGST Act provides that the cancellation of registration shall not affect the liability of a person to pay tax and other dues under this Act, whether or not, such tax and other dues are determined ***before or after the date of cancellation***. As observed by us above, the provision of Section 65 is in aid of initiating proceedings under Section 73 or Section 74 for recovery of tax not paid, short paid, erroneously refunded, or input tax credit wrongly availed or utilised. Therefore, in our view on a conjoint reading of Section 29(3) read with the scheme of Section 65 and with Sections 73 and 74 of the GST Act, the contention of the petitioner that the provision of Section 65 would not be applicable in case of a person who has de-registered himself cannot be accepted. The recording of no tax payable in the order accepting de-registration does not mean no proceeding under Sections 73 and 74 can be taken.

22. The tax or other dues can be determined before or after the date of cancellation. In the instant case, the preliminary findings of the audit as per its report dated 11 October 2024 is that the petitioner has claimed an excess input tax credit of Rs.3,60,44,378/- which is ineligible under the provisions of the Act. Furthermore, there is also a *prima-facie* finding that in the absence of proper documentation reversal of input tax credit (Rs.10,36,950/- + Rs.1,17,75,353/- + Rs.1,17,75,353/-) amounting to Rs.2,45,87,656/- is not in accordance

with the law. Preliminary audit reports also suggest short disclosure of other income, resulting in the short payment of tax. The preliminary audit report *prima facie* has found a total tax plus interest liability of Rs.7,01,31,710/- for the period 2020-21. In our view, the petitioner cannot escape non-facing audit proceedings in the light of these *prima facie* findings of the audit conducted by the authorities by taking a plea that since they have now been de-registered they are not covered by the provisions of Section 65 of the SGST Act.

23. Section 29(3) of the SGST also provides that cancellation of registration shall not discharge such person of any obligation under the SGST Act or the Rules. Section 65(5) provides that the authorised officer may require the registered person to afford him the necessary facility to verify the books of accounts or other documents and/or to furnish such required information and render such assistance for the timely completion of the audit. There is an obligation cast on a person in whose case of audit is conducted to comply with the directions of the tax authorities under Section 65(5) and these obligations are not affected even if registration is subsequently cancelled. This is made clear from the provisions of Section 29(3) of the SGST Act. If the contention of the petitioner that because they are de-registered, they are not covered by the provisions of Section 65 is accepted, then it would lead to provisions of Section 29(3) dealing with discharge of

obligation under the Act or the Rules redundant. It is a settled position that any interpretation that will make the Act's provisions redundant or nugatory cannot be accepted. Instead, we must adopt an interpretation that gives meaning to all the provisions taken together, if necessary, by resorting to a harmonious construction

24. We may also test the contention of the petitioner by an example. Let us say Mr A registers himself in year one and conducts business for three years, and, in the fourth year, de-registers himself. During the first three years, he may not have paid the tax or short-paid or availed wrong input tax credit or refund. If the tax authorities, before initiating any proceedings under Section 73 or 74, want to ascertain whether any such thing has happened or not by conducting an audit for the first three years, in our view, there is nothing erroneous in it. Certainly, if the interpretation of the petitioner is accepted, then the revenue will not be able to ascertain whether in a particular given case, proceedings under Sections 73 and 74 for recovery of tax or other dues can be initiated. In our view, such an absurd interpretation cannot be accepted, which is also in the teeth of all the provisions which we have analysed above.

25. It is also important to note that provisions of Section 65 of the SGST Act, read with Rule 101, give sufficient and adequate opportunity to a noticee to explain his case before any audit report is prepared. If an

assessee has complied with all the provisions of the Act or Rules and has not defaulted in payment of tax or has not made short-payment of tax or has not wrongly availed input tax credit or refund, then in our view, there should not be any hesitation on the part of the noticee to make his submissions and come clear rather than to obstruct the audit proceeding by taking the plea which is canvased before us. We disapprove of such an approach by any assessee. In any event, this Court's equitable and discretionary jurisdiction cannot be invoked for such purposes.

26. The petitioner has heavily relied upon the decision of the Single Judge of the Madras High Court in the case of '*Tvl. Raja Stores*' (supra). In our view, for the reasons and analysis made by us hereinabove, we respectfully do not agree with the view taken therein. The said decision has not considered the provisions in Section 29(3) and Rule 101. However, the decision does not preclude the tax authorities from initiating assessment proceedings under Sections 73 and 74 of the Act. As we have discussed earlier, provisions of section 65 of the SGST Act and the scheme thereof are in aid of sections 73 and 74. Therefore, even on this count, we respectfully disagree with the views expressed by the learned Single Judge of the Madras High Court.

27. In their preliminary audit findings dated 11 October 2024, the respondents relied upon the Rajasthan High Court's decision in the case

of *Ashoka Fabricast (P) Ltd. vs. Union of India*². For the reasons given above, we agree with the Rajasthan High Court's interpretation of Section 29(3) read with Section 65(1). However, the view taken by us is independent and without getting influenced by the decision cited at bar but is based on our independent analysis of the Scheme of the Act.

28. We may also observe that Exhibit 'G' is a notice dated 6 November 2023 which in its reference gives audit period of 2020-21 but in body refers to 2021-22. If it is 2020-21 then Exhibit- 'G' is not challenged in prayer clause and if it is 2021-22 then even in that case there is no challenge. Therefore even on this account in the absence of challenge of Exhibit-G, present petition is required to be dismissed.

29. To conclude, provisions of Section 65 of the SGST Act would be applicable for conducting the audit of a financial year when a person was registered, although, on the date of ordering the audit, such a person ceases to be registered voluntarily or otherwise.

30. For all the above reasons, this writ petition, challenging the impugned notice dated 21 August 2024 (Exhibit-A) and preliminary audit findings dated 11 October 2024 (Exhibit-B), is dismissed.

31. The rule is discharged with no order regarding costs.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)