IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE NINETEENTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

:PRESENT:
THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE DR. JUSTICE G.RADHA RANI

WRIT PETITION NO: 35628 OF 2024

Between:

M/s. Sri Venkateswara Films, 36, 7-3-709, B, 2nd Floor, R.P.Road, Secunderabad, Hyderabad - 500 003. Rep.by its Managing Partner Mr.V.Venkata Ramana Reddy.

Petitioner

AND

1. The Additional Commissioner of Central Tax, Office of the Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad Commissionerate, GST Bhavan, Opp.L.B.Stadium, Basheerbagh, Hyderabad - 500 004.
2. The Union of India, Rep. by its Secretary, Ministry of Finance, North Block, New Delhi - 110 001.
3. The Central Board of Indirect Taxes and Customs, Rep. by its Chairman, Ministry of Finance, Department of Revenue, North Block, Central Secretariat, New Delhi - 100 001.

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ of Mandamus or any other appropriate Writ or Order or Direction declaring.

(1) the action of the 1St Respondent in passing the Order-in-Original, dated 28.03.2024, levying IGST/CGST/SGST, under Section 73 of the IGST/CGST/SGST Act 2017, without even issuing Form GST DRC-01A as contemplated under Rule 142(1A) of the Rules 2017, passing a composite order for the tax periods 2018-19 to 2021-22 under the IGST/CGST/SGST Act 2017, though for the tax period 2017-18 and 2018-19 Order-in-Original, dated 18.12.2023 was already passed, as arbitrary, contrary to the provisions of the IGST/CGST/SGST Act 2017, patently barred by limitation, without jurisdiction as per Section 73(10) of the IGST/CGST/SGST Act 2017, more particularly, the Show Cause Notice in Form GST DRC-01, dated 31.01.2024 and Form GST DRC-07. dated 19.07.2024 are unsigned, and the Notification No.9/2023-Central Tax, dated 31.03.2023 and Notification No.56/2023-Central Tax, dated 28.12.2023 issued by the 3rd Respondent extending the limitation period to make the assessment, as illegal, ultra vires to Section 168A of the IGST/CGST/SGST Act 2017 and contrary to Article 14, 19(1)(g) and 265 of the Constitution of India,

(2) the action of the 1st Respondent in passing a single Order-in-Original, dated 28.03.2024 for a composite period of four financial years, i.e., 2018-19 to 20221-22, is not valid in the eye of law,

(3) the action of the 1St Respondent in passing the Summary of the Order in Form GST DRC-07, dated 19.07.2024 for the tax period 2018-19 demanding the amounts relating to the tax period 2018-19 to 2021-22, is not valid in the eye of law, more particularly uploading the Show Cause Notice and Form GST DRC-01, dated 23.01.2024 and 31.01.2024 uploaded in the GST Portal in Additional Notices and Order instead of Notices and Orders,

(4) declare that the rate of tax is 12 percent which was paid prior to October, 2021, as per Para 10 of Circular No.234/28/2024-GST, dated 11.10.2024 issued by the 2nd Respondent, which was issued by the 3rd Respondent, subsequent to passing of the Order-in-Original,

(5) Notification No.9/2023-Central Tax, dated 31.03.2023 and Notification No.56/2023-Central Tax, dated 28.12.2023 issued by the 3rd Respondent, as ultra vires to Section 168A of the IGST/CGST/SGST Act 2017 and consequently set aside Summary of the Order in Form GST DRC-07, dated 19.07.2024 and the Order-in-Original, dated 28.03.2024 passed by the 1st Respondent, for the tax periods 2018-19 to 2021-22 under the IGST/CGST/SGST Act 2017, as null and void.

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of Summary of the Order in Form GST DRC-07, dated 19.07.2024 and the Order-in-Original, dated 28.03.2024 passed by the 1st Respondent, for the tax periods 2018-19 to 2021-22 under the IGST/CGST/SGST Act 2017, pending disposal of WP 35628 of 2024, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri Shaik Jeelani Basha, Advocate for the Petitioner and Sri DOMINIC FERNANDES, Senior standing counsel for CBIC, for the Respondent Nos.1 and 3 and Sri B. Mukherjee, Advocate representing Sri Gadi Praveen Kumar, Dy. Sol. Gen. of India, for Respondent No.2, the Court made the following.

ORDER:

Sri Shaik Jeelani Basha, learned counsel for the petitioner, submits that this matter is similar to W.P.No.2123 of 2024, which has been entertained and interim protection has been granted.

Considering the aforesaid, Sri Dominic Fernandes, learned Senior Standing Counsel for CBIC, for respondent Nos1 & 3 and Sri B. Mukherjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.2, who are present in the Court, are directed to take notice and file counters, if any.

List for analogous hearing with W.P.No.2123 of 2024.

Maintaining parity, as an interim measure, till next date of hearing, it is directed that no coercive steps be taken against the petitioner pursuant to the impugned order and subsequent proceedings.

SD/-P.CH.NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Additional Commissioner of Central Tax, Office of the Commissioner of Central Tax, Central Excise and Service Tax, Secunderabad Commissionerate, GST Bhavan, Opp.L.B.Stadium, Basheerbagh, Hyderabad - 500 004.
2. The Secretary, Union of India, Ministry of Finance, North Block, New Delhi - 110 001.
3. The Chairman, Central Board of Indirect Taxes and Customs, Ministry of Finance, Department of Revenue, North Block, Central Secretariat, New Delhi - 100 001. (1 to 3 by RPAD)
4. One CC to SRI Shaik Jeelani Basha, Advocate [OPUC]
5. One CC to Sri Gadi Praveen Kumar, Dy. Sol. Gen. of India, Advocate (OPUC)
6. Two spare copies

HIGH COURT

SPJ & Dr. GRRJ

DATED:19/12/2024

List for analogous hearing with W.P.No.2123 of 2024

ORDER

WP.No.35628 of 2024

DIRECTION