



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.7254 of 2022
and
W.M.P.Nos.7284 & 7285 of 2022

M/s.Quality Mart,
Rep. By its Proprietrix, Mrs.Reena Saravanan
... Petitioner

-Vs-

1. The Assistant Commissioner (ST),
Hosur (North-2) Circle,
Hosur.
2. The Manager,
ICICI Bank Limited,
GSN Arcade,
Vemala Kalyana Mandapam,
Hosur-635 109.
... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the connected records of the impugned proceedings of the 1st respondent herein made in GSTN 33FSKPS7710G1ZH/2017-18, TIN 33966287637/2017-18 dated 08.07.2021 and consequential recovery notice/attachment order dated 15.11.2021 passed in his proceedings in Roc.84/2021/A3 by the 1st respondent against the 2nd respondent herein and quash the same.

For Petitioner : Mr.Manoharan Sundaram
For Respondents : Mr.Mr.V.Prasanth Kiran,
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the connected records of the impugned proceedings of the 1st respondent herein made in GSTN 33FSKPS7710G1ZH/2017-18, TIN 33966287637/2017-18 dated 08.07.2021 and consequential recovery notice/attachment order dated 15.11.2021 passed in his



proceedings in Roc.84/2021/A3 by the 1st respondent against the 2nd respondent herein and quash the same.

2. Under the GST Regime, the petitioner claim for Input Tax Credit was reversed through the order of the assessment dated 08.07.2021 for the assessment year 2017-18. Challenging the same, the present Writ Petition has been filed by the petitioner.

3. One of the ground raised by the petitioner dealer is that under Section 73 (10) of the TNGST Act, 2017 (In short 'the Act') that the assessing officer should have passed an order within three years period from the due date for furnishing of annual return for the financial year to which the tax was not paid or short paid or input tax credit wrongly availed etc.,

4. Within these three years period, since the same has not been passed, on the ground of limitation itself, the impugned order is infirm and therefore on the main ground though the petitioner had made challenge against the impugned order, the learned counsel for the petitioner also has canvassed the point that the assessing officer has stated that the documents have not been filed in support of the claim made by the petitioner for claiming Input Tax Credit and in this regard, all original documents are with the petitioner, which they are ready and willing to submit before the assessing authority any time. Therefore, on these grounds the petitioner wants to assail the impugned order.

5. However, Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondents would submit that the due date for furnishing the annual return for the financial year 2017-18 was 30.09.2018 and if that date is taken into consideration, within three years period i.e., on 08.07.2021 itself the order impugned has been passed, therefore it is saved by limitation.

6. Insofar as other merits of the case which has also been canvassed by the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents would further submit that, those issues can be decided by the appellate authority before whom, appeal can be very well be filed of course within three months from the date of the order impugned plus one month further condonable period and that chance also had been missed by the petitioner/dealer. Therefore the challenge now made is not entertainable. Hence, he seeks dismissal of the Writ Petition.

7. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials placed on record.



8. Insofar as the limitation point raised by the learned counsel for the petitioner is concerned, as has been rightly pointed out by the learned Government Advocate, that, the three years period ends only on 30.09.2021 within which since the order dated 08.07.2021 has been passed it is saved by limitation. Therefore, that point cannot be canvassed by the learned counsel for the petitioner in favour of the petitioner.

9. Insofar as other merits of the case like submission of supporting documents etc., this Court need not go into those aspects and that matter has to be necessarily gone into by the appellate authority before whom the petitioner can file appeal under Section 107 of the Act.

10. In this context, considering the factual matrix of the case, this Court is inclined to dispose of the Writ Petition with the following orders:

- That the impugned order can be assailed by filing appeal before the appellate authority. Therefore this writ petition is not entertainable and accordingly it is dismissed.
- However, liberty is granted to the petitioner to file such appeal under Section 107 of the Act within a period of two weeks from today, failing which, the petitioner has to face the consequences in the context of three months limitation plus one month condonable period under the provisions of the Act as well as the rules made thereunder.

11. With these observations, this Writ Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Anu/KST

To

1. The Assistant Commissioner (ST),
Hosur (North-2) Circle, Hosur.
2. The Manager,
ICICI Bank Limited,
GSN Arcade, Vemala Kalyana Mandapam, Hosur-635 109.

+1 cc to Mr. Manoharan Sundaram, Advocate Sr.NO. 20847

+1 cc to Spl Government Pleader(Taxes) Sr.NO. 21480

W.P.No.7254 of 2022

SJ(CO)

A.SK(30/03/2022)