IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20722 of 2023
and
W.M.P.Nos.20078 and 20080 of 2023

Rajesh ... Petitioner

Vs.

The Assistant Commissioner of CGST
and Central Excise,
Madhavaram Division,
Chennai North Commissionerate,
Anna Nagar 2nd Avenue,
Chennai - 600 040. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records on the files of the respondent in pursuant to their proceedings in Show Cause Notice No.48/2021 (ST) dated 26.04.2021 and C.No.GEXCOM/ADJN/ST/3505/2021-CGST-Adj. and Order-in-Original No.2/23 (ST) dated 31.03.2023 and quash the same as being belated adjudication, illegal, void, arbitrary, unconstitutional, barred by limitation, without jurisdiction, without authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.K.Thyagarajan
For Respondent : Mr.B.Ramana Kumar
Senior Standing Counsel

ORDER

Mr.B.Ramana Kumar, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Order-in-Original No.2/23(ST) dated 31.01.2023 passed by the respondent.

3. The impugned order precedes a Show Cause Notice dated 26.04.2021. The case of the petitioner is that the Show Cause Notice was beyond the period of limitation under Section 73 of the Finance Act, 1994.

4. It is submitted that the respondent has invoked larger period of limitation and therefore, in absence of any ground for suppression of facts or any of the other circumstances stipulated in proviso to Section 73 of the Finance Act, 1994, invocation of extended period of limitation was without jurisdiction.

5. I have heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent.

6. The question of limitation is not just a question of law but a mixed question of fact and law.

7. Admittedly, in this case, the petitioner has not been filed the returns as is contemplated under Rule 7 of the Service Tax Rules, 1994. Therefore, it is not open for the petitioner to allege that the Department is not entitled to invoke proviso to Section 73 of the Finance Act, 1994, as there is a suppression of facts.

8. Therefore, there is no case made out for interfering with the impugned Order-in-Original No.2/23(ST) dated 31.01.2023 passed by the respondent based on a Show Cause Notice dated 26.04.2021 invoking extended period of limitation under Section 73 of the Finance Act, 1994.

9. Be that as it may, liberty is given to the petitioner to file a statutory appeal before the Appellate Authority together with mandatory pre-deposit of

tax within a period of thirty days from the date of receipt of a copy of this order.

10. The Appellate Authority shall dispose the appeal on merits and in accordance with law.

11. This Writ Petition stands dismissed with the above liberty. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

14.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

The Assistant Commissioner of CGST
and Central Excise,
Madhavaram Division,
Chennai North Commissionerate,
Anna Nagar 2nd Avenue,
Chennai - 600 040.

C.SARAVANAN, J.

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