IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2023

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THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.23036 of 2023
and
W.M.P.Nos.22548 and 22549 of 2023

M/s.Alankar Business Services Private Limited,
Rep by its Chief Executive Officer and
Authorised Signatory Mr.R.Mathivanan,
19, Sastri Road, Ramnagar,
Coimbatore – 641 009. ... Petitioner

Vs

1.The State Tax Officer (Circle),
Singanallur (North),
Coimbatore.

2.The Appellate Deputy Commissioner (ST)(FAC),
Goods and Service Tax,
Commercial Taxes Building,
Coimbatore.

3.The Proper Officer,
Ramnagar (C), Commercial Taxes Building,
Second Floor, Dr.Balasundaram Road,
Coimbatore – 641 018. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent herein culminating in the order No.222104221024166 dated 31.05.2022 in Reference No.ZD330522016772P for the Assessment Year 2018-2019 and the consequential order dated 23.03.2023 passed by the second respondent herein in MP.No./GST/132/2023 and quash the same as illegal and directing the first respondent herein to pass fresh orders after granting an opportunity of hearing to the petitioner herein.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.C.Harsharaj
Additional Government Pleader

ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondents.

2. The petitioner is aggrieved by the impugned order dated 31.05.2022, passed by the first respondent. Against the aforesaid order, the petitioner has also filed an appeal before the second respondent on 08.03.2023 with a delay of 159 days. Hence, it has culminated in an

order dated 23.03.2023 of the second respondent. The second respondent has dismissed the appeal holding that the appeal was time barred and beyond the condonable period of limitation under Section 107 of the respective GST enactment, 2017.

3. The specific case of the petitioner is that notices/communications under Section 169 of the respective GST enactment were served on the petitioiner through web portal which went un-noticed.

4. It is submitted that the order that was passed by the first respondent on 31.05.2022 also went un-noticed and the petitioner came to know about the same only when an amount of Rs.97,428/- lying in the petitioner's electronic cash ledger was appropriated on 24.01.2023 towards the tax amount of Rs.17,37,991/- confirmed vide order dated 31.05.2022 of the first respondent. It is further submitted that a sum of Rs.2,10,654/- was attached. The aforesaid sum was also appropriated towards the aforesaid tax liability of Rs.17,37,991/- confirmed vide order dated 31.05.2022 of the first respondent.

5. The learned counsel for the petitioner submits that the petitioner has also filed GSTR-9 and the difference in mis-match between the credit that was availed and that was reported and turn over has been reconciled and therefore submits that the impugned order passed by the first respondent without considering the same.

6. The learned Additional Government Pleader for the respondents on the other hand would submit that writ petition is devoid of merits in as much as it has been filed contrary to the decision of the Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

7. That apart, it is submitted that Section 169 of the respective GST Act are clear. It is further submitted that petitioner is a regular assessee and therefore it is not open for the petitioner to argue that the order dated 31.05.2022 was noticed by the petitioner only after a lapse of a period of 159 days.

8. That apart, it is submitted that even after the appeal filed by the petitioner on 08.03.2023 was dismissed on 23.03.2023 by the second respondent/Appellate Deputy Commissioner, the petitioner did not file the present writ petition within the period of limitation prescribed under Section 112 of the resepective GST enactment, 2017. It submits that even on this count also, writ petition is liable to be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

10. The issue arising out of mis-match between credit availed and the tax returns of the supplier requires to be addressed. If it is not reconcilled it will leave the Assessment incomplete and open ended. Therefore, to the balance the interest of the revenue and the petitioner, Court is inclined to direct the petitioner to deposit a sum of Rs.2,00,000/- (in cash) through its electronic cash ledger within a period of four weeks from the date of receipt of a copy of this order. On such deposit being

made, the second respondent/Appellate Commissioner shall number the appeal and dispose the Appeal on merits and in accordance with law, as expediously as possible, preferably within a period of six month thereafter. Needless to state, before passing such order, the petitioner shall be heard. Pending disposal of appeal, all recovery proceeding shall be kept in abeyance. It is also made clear that if the petitioner fails to pre-deposit the aforesaid amount within such time, the respondents are at liberty to proceed against the petitioner.

11. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

07.08.2023

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