IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.23394 and 23400 of 2023
and
W.M.P.Nos.22927, 22930 and 22936 of 2023

M/s.S.S.Traders,
Represented by its Proprietrix ... Petitioner in both W.Ps

Vs.

The Assistant Commissioner (ST)/
State Tax Officer,
Periyanaickenpalayam Circle,
Coimbatore - 18. ... Respondent in both W.Ps

Prayer in W.P.No.23394 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of impugned assessment order in Ref.No.ZD330622011609N dated 21.06.2022 for assessment year 2018-2019 on the files of the respondent herein, quash the same.

Prayer in W.P.No.23400 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of impugned recovery notice in GSTIN No.33ABNPI9658N1ZU dated 12.07.2023 received by the petitioner herein through registered post on 13.07.2023 on the files of the respondent herein, quash the same.

For Petitioner (In both W.Ps)	:	Mrs.Aparna Nandakumar
For Respondent (In both W.Ps)	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

COMMON ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner started business in the year 2007 after the VAT was implemented.

3. The case of the petitioner is that the petitioner's GST registration was cancelled on 18.11.2021 and therefore, the petitioner was unable to access the web portal and could not file the returns. During the interregnum, the impugned Assessment Order came to be passed on 21.06.2022, which preceded notices dated 31.12.2021 and 12.05.2022.

4. The specific case of the petitioner is that the petitioner came to know about the impugned Assessment Order dated 21.06.2022 only after the recovery of notice was issued to the petitioner on 12.07.2023, which was received by the petitioner on 13.07.2023. It is submitted that only after the recovery notice was received on 13.07.2023, the petitioner contacted a chartered accountant who downloaded the impugned order from the web portal.

5. The learned counsel for the petitioner submits that the dispute has arisen only on account of the difference between the turn over disclosed in GSTR-01 and the ITC claimed in GSTR-3B.

6. The learned counsel for the petitioner further submitted that one opportunity may be given to the petitioner, so that the petitioner can explain the discrepancy. To show *bona fide*, the learned counsel for the petitioner submits that the petitioner is willing to deposit a token amount that may be imposed by this Court.

7. It is submitted that the discrepancy has arisen only on account of the delay in filing returns and in paying tax only due to the failure of the suppliers to file returns in time. It is further submitted that the petitioner had closed down the business.

8. The learned Government Advocate for the respondent would submit that even according to the petitioner, already informations were uploaded in the web portal and was downloaded by the petitioner's chartered accountant. Therefore, there is no merits that the petitioner was not put to notice either of the Show Cause Notice dated 12.05.2022 or the impugned Assessment Order dated 21.06.2022.

9. It is submitted that the writ petitions are clearly barred by law and are liable to be dismissed in terms of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

11. Prima facie, the dispute has arisen on account of discrepancy/mismatch between the turn over in GSTR-01 and GSTR-3B.

12. The statement of the learned counsel for the petitioner that the petitioner is willing to deposit a token amount to prove *bona fide* stands recorded.

13. The impugned Assessment Order dated 21.06.2022 does not bear any discussion as neither reply was filed by the petitioner before the respondent prior to passing of the impugned order nor the petitioner appeared before the respondent. Failure of the petitioner to file reply on account of closure of the business can be attributed to the negligence of the petitioner. However, on that score alone, the impugned order cannot be sustained.

14. Petitioner deserves a chance to explain the case as there is a possibility of the petitioner establishing that credit was available for being set off against the tax liability of the petitioner for the period in dispute.

15. The petitioner shall deposit a sum of Rs.20,00,000/. This amount to be deposited by the petitioner shall be either appropriate or refunded to the petitioner subject to the final outcome of the proceedings pursuant to this order.

16. Considering the above, the impugned Assessment Order dated 21.06.2022 and the consequential recovery notice dated 12.07.2023 are quashed and the case is remitted back to the respondent to redo the exercise subject to the petitioner depositing the aforesaid sum of Rs.20,00,000/- within a period of four weeks from today.

17. Subject to such compliance, the respondent shall redo the exercise and pass appropriate orders within a period of four weeks thereafter. It is made clear if the petitioner fails to comply with the terms of this order, this order shall stand automatically revoked without further reference.

18. The petitioner shall also file a reply if any together with documents to establish that she is indeed entitled to the relief.

19. These Writ Petitions are disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

08.08.2023

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

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To

The Assistant Commissioner (ST)/
State Tax Officer,
Periyanaickenpalayam Circle,
Coimbatore - 18.

C.SARAVANAN, J.

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