



W.P.No.25013 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25013 of 2023

and

W.M.P.Nos.24441 and 24442 of 2023

SRM Engineering Construction Corporation Limited,
Represented by its Assistant Manager
Finance and Accounts and Authorized Signatory,
Kamaladasan D,
No.24, G N Chetty Road, T.Nagar,
Chennai – 600 017.

... Petitioner

vs.

The Assistant Commissioner (ST) (FAC),
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai – 600 028.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking to issue a Writ of Certiorarified Mandamus, to call for the impugned order of the respondent passed in GSTIN : 33AAFCS5856E1ZC/2019-20 dated 23.02.2023 and quash the same and further direct the respondent to redo the adjudication in accordance with law after granting opportunity of personal hearing.



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For Petitioner : Mr.N.Murali
For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

Mrs.K.Vasanthamala, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Assessment order dated 23.02.2023. The impugned order preceeds notice issued in GST DRC 01 on 19.12.2022. The petitioner however failed to respond to the same and therefore on account of the mis-match between the GSTR1 and GSTR 3B and also difference in ITC between GSTR 3B and GSTR 2A, the impugned order has been passed.

3. Normally period of limitation for filing an Appeal would have expired on 22.05.2023. With a further grace period of 30 days, the last date for filing an appeal would have expired on 22.06.2023.



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4. The petitioner has thus not filed a Statutory Appeal before the Appellate Commissioner under Section 107 of the GST Act and in view 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. The petitioner has now filed this writ petition on 21.08.2023 with a delay of 58 days. Although 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. has declared that orders cannot be challenged under Article 226 of the Constitution of India beyond the statutory period of limitation for filing appeal, Court is inclined to dispose this writ petition.

5. The explanation given by the petitioner in the affidavit filed in support of the present writ petition in para 7 appears to be reasonable.

It reads as under:

“7.It is submitted the business was on decline trend, and also the staffs who were active during the period of operation prior to 2020 also left the company. The company is in existence mostly to sell the completed



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works, land stock and to collect its overdues receivable and also the business which depends upon the group concerns activity. In that process, the company did not frequently logged in the GST portal by the new and few employees of the company to visit the “notices and orders” tab. In that process, the uploading of GST DRC – 01 dated 19.12.2022 and subsequently the impugned order dated 23.02.2023 was not noticed in the GST portal by the new staff of the company. The company came to know there was a demand against them only when they manually received the recovery notice dated 24.07.2023. Immediately, the petitioner company filed a representation dated 27.07.2023 and also acknowledged by the respondent. In the representation, the petitioner company elaborately explained that there is no difference in the turnovers between GSTR 1 and 3B and also difference in ITC between GSTR 3B and 2A and whatever differences were paid by the company. However, the respondent did not consider the representation and again issued a urgent notice dated 03.08.2023 received by the petitioner on 07.08.2023.”

6. Considering the above, the delay in filing the appeal is condoned. The petitioner is directed to file a Statutory Appeal within a period of 30 days from the date of receipt of a copy of this order. The Appellate Commissioner shall number the appeal and dispose the same on merits in its turn.



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7. Needless to state, the petitioner shall pre-deposit the amount that is required to be pre-deposited in terms of Section 107 of the GST Act, 2017. Before passing such order, the petitioner shall also be heard.

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

24.08.2023

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

The Assistant Commissioner (ST) (FAC),
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