IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2023

CORAM

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

W.P.Nos.26163, 26187 and 26190 of 2023
and WMP.Nos.25563, 25586 and 25590 of 2023

M/s.Annamalai Food Service,
Rep by its Proprietor, Subramaniyan Ramya
... Petitioner in WP.No.26163/2023

M/s.SBY Enterprises
rep by its Proprietor, Vindhan Bhagavathi
3rd Floor, No.8 Jeevadharshan Complex,
Vanthavasi Salai, Vethasalam Nagar,
Kancheepuram – 631 502.
... Petitioner in WP.No.26187/2023

M/s.SSM Engineering & Construction,
rep by its Proprietor
Selvaraj Subramani Hemanthji
No.20, Mettu Street, Periyakuppam,
Thiruvallur – 602 001.
... Petitioner in WP.No.26190/2023

Vs

The Appellate Authority/The Joint Commissioner of GST (Appeals-II)
O/o.The Commissioner of GST & Central Excise (Appeals-II)
Newry Towers, 2nd Floor, No.2054/I, II Avenue,
12th main Road, Anna Nagar, Chennai – 40.
... first respondent in all the WPs.

2.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer,
Kacheepuram Rural, Maraimalai Nagar – Division,
Walajabad Range, Kancheepuram.
... Respondents in WP.No.26163/2023

2.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer, Zone-XII,
Kacheepuram Rural, Maraimalai Nagar – Division,
Walajabad Range, Kancheepuram.
... Respondents in WP.No.26187/2023

2.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer,
Tiruvallur Circle, Poonamallee II Range,
Poonamallee Division, Tiruvallur.
... Respondents in WP.No.26190/2023

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the 2nd respondent order dated 03.03.2023, 14.03.2023 and 23.02.2023 in reference Number : ZA3303230185620, ZA3303230661331 and ZA3302231181372 respectively and the records of the 1st respondent pertaining to the impugned order dated 25.08.2023 passed in Order-in-Appeal No.158, 157 & 159/2023 (GSTA-II) (JC) respectively and quash the same and consequently direct the respondents to revoke the cancellation of the GST registration of the petitioner's firm.

For Petitioners : Mr.P.Suresh Babu – in all the cases.

For Respondents : Mr.V.Sundareswaran, Sr.SC
- in all the cases.

COMMON ORDER

All the three writ petitions are being disposed of by this common order. In these writ petitions, the petitioners have challenged the respective Order in Appeal Nos.157-159/2023 dated 25.08.2023.

2. These appeals have been dismissed by the first respondent herein (the Appellate Authority) under Section 107 of the CGST, 2017 on the ground of limitation, as the appeals were filed by the respective petitioners beyond the condonable period of limitation.

3. The respective petitioners have explained the delay in filing the appeals before the first respondent in the affidavit filed in support of the respective writ petitions. It is submitted that the impugned Order in Original were passed on 03.03.2023, 14.03.2023 and 23.02.2023 and were in the web portal. Therefore, it is submitted that the impugned orders went unnoticed by the respective petitioners. The petitioners have also pleaded that he was unwell and was undergoing treatment. Hence, the petitioners prayed that the impugned orders to be set aside and

remanded back to the first respondent to pass orders on merits without considering the question of limitation. On merits, the learned counsel for the petitioner submits that the respective petitioner have good case on merits.

4. On the other hand, the learned counsel for the respondents would submit that the writ petitions are liable to be dismissed in the light of decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others V. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 (19) SCC 681.***

5. I have heard the arguments advanced by the learned counsel for the petitioners and the learned senior standing counsel for the respondents.

6. In these writ petitions the petitioners challenging the cancellation of the registration certificate and the Order in Original seeking to demand tax from the petitioners during the period in dispute. The reasons given by the respective petitioners appears to be reasonable.

The Court is therefore inclined to direct the Appellate Commissioner to take up the appeals and dispose of the same on merits without any reference to the period of limitation subject to the respective petitioners depositing 25% of the disputed tax within a period of thirty days from the date of receipt of a copy of this order. Subject to the respective petitioners complying with the above requirement, the first respondent shall take up the respective appeals of the petitioners and dispose the respective appeals on merits and in accordance with law.

7. With the above observations, all the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.09.2023

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

C. SARAVANAN,J.
tsh

To
The Appellate Authority/The Joint Commissioner of GST (Appeals-II)
O/o.The Commissioner of GST & Central Excise (Appeals-II)
Newry Towers, 2nd Floor, No.2054/I, II Avenue,
12th main Road, Anna Nagar, Chennai – 40.

2.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer,
Kacheepuram Rural, Maraimalai Nagar – Division,
Walajabad Range, Kancheepuram.

3.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer, Zone-XII,
Kacheepuram Rural, Maraimalai Nagar – Division,
Walajabad Range, Kancheepuram.

4.The Superintendent of GST & Central Excise,
Commissionerate – Chennai Outer,
Tiruvallur Circle, Poonamallee II Range,
Poonamallee Division, Tiruvallur.

W.P.Nos.26163, 26187 and 26190 of 2023

07.09.2023.