BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)Nos.5963, 5964 of 2023
and
WMP(MD)Nos.5572, 5574, 5576, 5577 of 2023

Tvl.AMK Athencottasan Muthamizh
Kazhagam Man Power Services
Rep. by its Director
R.Arul Jothi .. Petitioner in both WPs

v.

1.State Tax Officer,
Nagercoil – 1.

2.Deputy Commissioner (ST),
Commercial Taxes Building,
Nagercoil.

3.The Branch Manager,
Indian Overseas Bank,
Court Road,
Nagercoil.

4.The Branch Manager,
Indian Overseas Bank,
Asaripallam – 629 201,
Nagercoil.

5.The Commissioner,
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai. .. Respondents in both Wps

[R.5 *suo-motu* impleaded vide order dated .01.2024]

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent in Ref.No.33ABBFA 8472 G1ZK/2019-20 dated 09.02.2022 and Ref.No.33ABBFA 8472 G1ZK/2020-21 dated 14.02.2022, respectively, quash the same for procedural irregularity and for want of jurisdiction and directing the second respondent to consider and pass orders on the petitioner's applications dated 24.11.2022, 09.01.2023, 17.02.2023.

For Petitioner : Mr.C.Arul Vadivel @ Sekar
Senior Counsel
Assisted by
Mr.N.Mariappan

For Respondents : Mr.M.Sarangan,
Additional Government Pleader
for R.1, R.2, R.5

Mr.N.Dilipkumar
for R.3, R.4
[In both WPs]

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COMMON ORDER

The petitioner is a service provider, providing man power services to the Central Government Departments and Tamil Nadu Government Corporations. The petitioner has failed to pay the GST on time for the year 2019-20 and 2020-21. Therefore, the respondents 1 & 2 have imposed a penalty and directed the petitioner to pay the interest as per Section 50(1) of the GST Act and also made a demand u/s.73(3) of the GST Act. Challenging the same, the petitioner has moved these writ petitions.

2.When the writ petitions came up for hearing, learned Senior Counsel for the petitioner submitted that they are not pressing the relief sought for, however, requested to consider the case of the petitioner as per Section 80 of the GST Act. According to the learned Senior Counsel, during the Covid-19 period, the petitioner has belatedly paid the GST and the Commissioner is having powers u/s.80 of the Act to grant 24 instalments for the payment of interest, which was imposed u/s.50(1) of the Act.

3.Learned Additional Government Pleader submitted that apart from the Covid-19 period, the petitioner has submitted the GST returns belatedly for the period 2019-20 also. That apart, for invoking the provision u/s.80 of the Act, the petitioner has to submit an application before the Commissioner and if any such application is filed, the same would be considered on its merits.

4.This Court considered the rival submissions made on either side and perused the available materials.

5.The petitioner has challenged the demand notice issued u/s.73(3) of the Act. For the belated payment of GST returns, the Department has imposed a penalty of interest as per Section 50 of the Act. For the payment of this amount, the Act provides for some instalments not exceeding 24 months, as per Section 80 of the Act. For better appreciation, Section 80 of the GST Act is extracted as under:-

> *"On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under*

this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery."

6.In view of the above provision, this Court *suo-motu* impleads the Commissioner, Commercial Taxes, Ezhilagam, Chepauk, Chennai, as a party to this writ petition and Mr.M.Sarangan, learned Additional Government Pleader is to take notice on behalf of the newly impleaded respondent.

7.Considering the limited scope of the relief sought for, this writ petition is disposed of with a direction to the petitioner to submit an application to the newly impleaded respondent / Commissioner seeking monthly instalments as per Section 80 of the Act. On receipt of such application, the Commissioner shall pass appropriate orders. It is made clear that this Court has not expressed anything on the merits of the claim and the Commissioner is to pass orders, on merits and in accordance with law.

In fine, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No **17.11.2023**
NCC : Yes / No
Internet : Yes
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To

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2.Deputy Commissioner (ST),
Commercial Taxes Building,
Nagercoil.

3.The Commissioner,
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai.

B.PUGALENDHI, J.

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