BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.03.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.7203 of 2023
and
W.M.P.(MD) Nos.6789 and 6790 of 2023

M/s.Jeevan Auto Motor Pvt. Ltd.,
Rep., by its General Manager,
M.Kumarasamy,
144/1, Palanganatham,
TPK Road, Madurai. .. Petitioner

Vs.

The Assistant Commissioner (ST),
Madurai Rural South Circle,
Madurai. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records in Ref.No.ZD331022038574S dated 28.10.2022 for tax period August 2022 passed by the respondent and quash the same and direct him to consider the returns filed in GSTR-1 and GSTR-3B for August 2022, afford an opportunity of personal hearing and pass an order judicially.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.D.Ghandiraj
Special Government Pleader

ORDER

This writ petition is filed for the issue of a Writ of Certiorarified Mandamus calling for the records in Ref.No.ZD331022038574S dated 28.10.2022 for tax period August, 2022 passed by the respondent and quash the same and direct him to consider the returns filed in GSTR-1 and GSTR-3B for August 2022.

2. It is the case of the petitioner that they were unable to submit their GSTR-3B return within the stipulated time on account of the absence of their main Accountant, although GSTR-1 return has been filed in time. Since GSTR-3B was not filed in time, the petitioner has received the order impugned dated 28.10.2022 stating that the petitioner has failed to pay GST for the month of August, 2022 within the stipulated time and therefore, arrived at a tax liability on the basis of the deemed sales turnover under Section 62 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as “the TNGST Act”).

3. The petitioner would submit that they have voluntarily filed form GSTR-1 on 12.09.2022 and GSTR-3B return on 01.12.2022 for the period August, 2022. The delay is only on account of the petitioner's Accountant taking ill. The petitioner would submit that they have duly declared their liability in GSTR-1 and GSTR-3B return for the month of August, 2022 on 12.09.2022 and 01.12.2022 respectively. There was no intention on the part of the petitioner to evade or to avoid payment of GST. The petitioner would further submit that the impugned assessment order under Section 62 of the TNGST Act suffers from serious lacuna and unless the same is set aside, it would be violative of the principles of natural justice and further, the order passed is unreasonable and without jurisdiction. After making his submissions, the learned counsel for the petitioner brought to the notice of this Court the proposed amendment to Section 62 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") as recommended in the 49th GST Council Meeting. The amendment proposed would read as follows:

> *"2. Amendment to Section 62 CGST Act, 2017 to extend timelines under sub-section (2) thereof and one time amnesty for past cases: As per sub-section*

(2) of section 62 of CGST Act, 2017, the best judgment assessment order issued under sub-section (1) of the said section is deemed to be withdrawn if the relevant return is filed within 30 days of service of the said assessment order. The Council recommended to amend section 62 so as to increase the time period for filing of return for enabling deemed withdrawal of such best judgment assessment order, from the present 30 days to 60 days extendable by another 60 days, subject to certain conditions.

The Council has also recommended to provide an amnesty scheme for conditional deemed withdrawal of assessment orders in the past cases where the concerned return could not be filed within 30 days of the assessment order but has been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not."

Pursuant to the recommendation, a Government Order has also come into effect in and by which best assessment judgment has been extended up to 30.06.2023.

4. This Writ Petition is allowed, on the basis of the recommendation that is now proposed into Section 62 of the CGST Act, whereby a window of 60 + 60 days time is given for challenging the assessment order passed under Section 62(2) of the TNGST Act and the impugned order dated 28.10.2022 is set aside. It is needless to state that the liberty given to the petitioner to file an appeal will be subject to the penalty or interest that might be leviable in the case. It is also made clear that the appeal shall be filed within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

31.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

P.T.ASHA, J.

abr

To

The Assistant Commissioner (ST),
Madurai Rural South Circle,
Madurai.

W.P.(MD) No.7203 of 2023

Dated: 31.03.2023