BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2023

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THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No.16748 of 2023
and
W.M.P(MD)Nos.13976 & 13977 of 2023

P.R.Hardwares,
Represented by its Proprietrix Mrs.Ranjitham. ... Petitioner

vs.

The State Tax Officer,
Tiruchendur,
Tuticorin. ... Respondent

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records of the respondent in Reference No.ZD330323030706S, dated 07.03.2023 and quash the same as arbitrary, illegal.

For Petitioner : Mr.S.Ramanan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This writ petition has been filed for Writ of Certiorari, to quash the impugned order passed by the respondent in Reference No.ZD330323030706S, dated 07.03.2023.

2. Heard Mr.S.Ramanan, the Learned Counsel appearing for the petitioner and Mr.R.Suresh Kumar, the Learned Additional Government Pleader appearing for the respondents and perused the material documents placed on records.

3. The brief facts of the case are that the petitioner in doing business of Trading Electrical goods and he is an assessee under GST in registration GSTIN/33AGHPR4673BIZH. The respondent has issued notice, namely FORM GST DRC-01A, dated 01.12.2022, directing the petitioner to explain the discrepancies in the returns filed by the petitioner. Thereafter another Notice, dated 03.01.2023 was also issued. The petitioner could not submit his reply due to his illness. Hence the respondent proceeded further and issued Summary Order, dated 07.03.2023 and the details of the proposal is as under:

Details of Demand:	Tax:	1,57,934.00
	Penalty:	1,57,934.00
	Interest:	21,288.00

The petitioner submits that, as against the demand in summary of order, the petitioner has already paid for Rs.1,57,934 on 24.06.2023 which is more than 10% of Pre-deposit required to be remitted to file an appeal under section 107 of the Act.

4. The contention of the petitioner is that there is a violation of principles of natural justice before passing the summary order. Moreover, the respondents have passed an order based on the assumption and the same is not justifiable. Hence the petitioner is before this Court.

5. The respondents have passed the assessment order, where they have stated that the petitioner has relied on the Invoice No.112 which was issued by the supplier Tvl. Mahaa Agency with GSTIN number, but the said invoice is issued without actual supply of goods received by petitioner. During the search conducted at the place of business of Tvl. Mahaa Agency it has been ascertained it is a non-existent taxpayer. In turn the petitioner had claimed ITC from a non-existent taxpayer. Therefore, ITC claimed by the petitioner based on such invoice cannot entertained. Hence, the respondent has proceeded to impose tax on the fraudulent claim ITC and the tax was determined as under:

CGST tax determined	:Rs.78967/-
SGST tax determined	:Rs.78967/-

The respondent has further proceeded to impose penalty which is stated hereunder:

CGST penalty determined	:Rs.78967/-
SGST penalty determined	:Rs.78967/-

The respondent also imposed interest and the same is stated hereunder:

CGST Interest determined	:Rs.10644/-
SGST Interest determined	:Rs.10644/-

6. The petitioner submitted that under Section 74(9), the respondents are shall consider the representation of the assessee, then determine the tax, interest and penalty. However, Section 74(10) it is stated that the officer shall issue the order under Section 74(9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund. Therefore, the petitioner submits within one month, the entire process is over, therefore, the respondent has failed to grant opportunity granted under section 74(9) and 74(10) of the Central Goods and Services Tax Act, 2017 and the relevant portion is extracted here under:

> ***"74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts:***
>
> ***…***
>
> *(9). The proper officer shall, after considering the representation, if any, made by the person chargeable with*

tax, determine the amount of tax, interest and penalty due from such person and issue an order

(10) The proper officer shall issue the order under sub-section (9) ***within a period of five years*** *from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to or within five years from the date of erroneous refund.*

7. On perusal of the aforesaid provisions, it is seen that the respondents are empowered to pass order within a period of five years. But the Learned Counsel Additional Government Pleader submitted that the time is only outer limit and it is not barring the respondents from passing order before five years. After hearing the rival submission this Court is of the considered opinion that, if it is considered as outer time limit prescribed for the respondents to pass orders, then the respondents may be empowered to pass orders. But the assessee must be given sufficient opportunity. In the present case the notice was issued on

01.12.2022 and 03.01.2023 and Summary Order was passed on 07.03.2023, i.e. within two months the respondents have passed an order. Even though the provisions prescribe five years as outer limit but the provisions do not prescribe minimum time from passing order, in such circumstances the respondents ought to have passed order within reasonable time. Two months period definitely is not reasonable time and the petitioner is right in stating that adequate opportunity was not granted to the petitioner.

8. As far as imposition of penalty is concerned, the respondents have imposed 100% penalty. The provision grants concession for the assessee to pay 15% of penalty if the assessee pays the tax, interest prior to issuance of notice under section 74(1). The provisions further state that if the assessee pays the tax, interest after issuance of notice, then the assessee shall pay 25% of penalty. Further the provisions state that if the assessee pays tax, interest within one of passing the order, then the assessee shall pay 50% of such penalty. If the tax and interest is paid as per the time line stated supra then all proceedings in respect of the said notice shall be deemed to have been concluded. The contention of the petitioner is that since he has paid the entire tax demand on 26.06.2023 the petitioner is entitled to the benefits under section 74. But the Learned Additional Government Pleader submitted that the petitioner has paid the tax beyond the period of one month from the date of the order, hence the petitioner is not entitled to such concession granted under the section 74. After considering the rival submissions this Court is of the considered opinion that the respondents have completed the entire proceedings within two months and there is violation of principles natural justice. Also, this Court has held that the respondents ought to have concluded the proceedings within reasonable time even though the outer time limit is five years. By passing the orders early, the respondent have denied the valuable right of the petitioner to avail the concession granted under section 74. The petitioner has already paid the entire tax liability and the interest. Therefore, this Court is directing the respondents to collect the 15% of the penalty alone and the petitioner shall pay the 15% penalty within four weeks from the date of receipt of the order. On such payment the respondents shall conclude the proceedings in respect of the notice as stated in section 74.

9. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, W.M.P(MD)No.13976 of 2023 is allowed and W.M.P(MD)No.13977 of 2023 is closed.

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

17.08.2023

To

The State Tax Officer,
Tiruchendur,
Tuticorin.

S.SRIMATHY, J

ksa

W.P.(MD)No.16748 of 2023

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