BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23752 of 2023
and
W.M.P.(MD).No.19935 of 2023

M/s.C.Siva Anand.,
Anand Hardwares and Electricals,
Represented by its Proprietor
Mr.Chellan Sivanand,
GSTIN 33CUMPS7718F1Z8,
D.No.3/89J, J P Complex,
Thiruvarambu,
Kalkulam Taluk,
Kanyakumari-629 183. ... Petitioner

Vs.

The Superintendent of GST and
Central Excise,
Office of the Superintendent of GST
and Central Excise,
Marthandam Range,
48/1-4, 1st floor, Sivaraj Building,
Tower Junction,
Nagercoil-629 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records in assessment orders issued by the respondent in OC No.289/2023 order in Original No.GST/TNVL/SUPDT/MTM/37/2023 dated 26.06.2023 and quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply and records dated 26.04.2023 filed by the petitioner and in the light of principles laid down in the case of M/s. Refex Industries Limited, Vs. The Assistant Commissioner of CGST & Central Excise, reported in 2020(2) TMI 794 - Madras within such time as may directed by this Court.

For Petitioner	:	Mr.S.Karunakar
For Respondent	:	Mr.R.Nanda Kumar, Senior Standing Counsel, Assisted by M/s.S.Ragaventhree, Junior Standing Counsel

ORDER

This Writ Petition is filed for Writ of Certiorarified Mandamus, to quash the order in original dated 26.06.2023 and direct the respondent to pass assessment order afresh after affording an opportunity of being heard by considering the reply and records dated 26.04.2023 filed by the petitioner and in the light of principles laid down in the case of M/s. Refex Industries Limited, Vs. The Assistant Commissioner of CGST & Central Excise, reported in 2020(2) TMI 794 - Madras.

2. The contention of the petitioner is that the petitioner had paid the entire tax through Input Tax Credit for all the period and for the entire amount and if

this fact is taken into account there will not be any tax liability. But the respondent had imposed tax and has also imposed penalty and interest. Moreover, the petitioner has already paid the entire tax even prior to the initiation of the assessment proceedings. In the impugned order, the respondent has not discussed any of the grounds raised by the petitioner and it is one-line order. The relevant portion of the impugned order is extracted hereunder:

> *But they failed to pay the interest till date. Their reply dated 26.04.2023 is also not tenable. Hence, I hold that they are liable to pay an interest amount of Rs. 6,04,427/-.*

3. Therefore, this Court is of the considered opinion, it is a non-speaking order. Therefore, the impugned order passed by the respondent is quashed. The matter is remitted back to the respondent to consider the petitioner's case in the light of M/s. Refex Industries Limited, Vs. The Assistant Commissioner of CGST & Central Excise, reported in 2020(2) TMI 794 – Madras and pass an order after affording opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of four months (4) from the date of receipt of a copy of this order.

4. With these observations and directions, this Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

29.09.2023

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

S.SRIMATHY, J.

Sml

W.P.(MD).No.23752 of 2023

29.09.2023