IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.03.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.7356 of 2024
and W.M.P.No.8251 of 2024

Rangaswamy Jeevanantham ... Petitioner

-vs-

The Superintendent,
O/o. The Superintendent of GST and Central Excise
Coimbatore II-B Range
No.1441, Elgi Building,
Trichy Road, Coimbatore 641 018. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent leading to issuance of Order in Original dated 01.09.2023 vide OC No.134/2023 and quash the same.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.Ramesh Kutty, Sr. SC

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ORDER

An order dated 01.09.2023 is the subject of challenge in this writ petition. The petitioner asserts that he was an employee of Smart Way India Enterprises LLP, Coimbatore and that the payments received towards services provided by him as an employee of the said entity were erroneously subject to TDS under Section 194H of the Income Tax Act, 1961 (the I-T Act). Since the impugned order was issued on the assumption that the petitioner was an agent and had received commission, such order is challenged.

2. Learned counsel for the petitioner referred to the appointment letter dated 12.11.2015 and pointed out that tax liability, including under the I-T Act, was agreed to be borne by the limited

liability partnership. He therefore submits that the petitioner was actually an employee entitled to variable remuneration and not an agent. He also submits that the expression agent' was used loosely although the relationship was that of employer and employee.

3. Mr.Ramesh Kutty, learned senior standing counsel, accepts notice for the respondent. He submits that the petitioner was admittedly an agent of the limited liability partnership and was liable for GST on forward charge basis on the commission received from the entity for services provided by him. Therefore, he submits that no case is made out for interference.

4. On examining the impugned order, it appears that the respondent noticed that Form 16A was filed in respect of the petitioner with regard to TDS. In those circumstances, the tax demand was confirmed along with interest and penalty.

5. The impugned order was preceded by an intimation and show cause notice. The petitioner was also provided an opportunity of being heard. Hence, there was no breach of principles of natural justice and the order was issued after considering the petitioner's reply to the show cause notice. In these circumstances, I am not inclined to exercise discretionary jurisdiction in favour of the petitioner.

6. The petitioner filed this writ petition on 09.02.2024. The period of limitation for filing an appeal expired in December 2023 and the condonable period expired in January 2024. Since the writ petition was filed in earlier February 2024, the period of delay in filing a statutory appeal is limited if the period of pendency of the writ petition is excluded. Therefore, if the petitioner files a statutory appeal along with requisite pre-deposit within ***two weeks*** from the date of receipt of a copy of this order, the appellate authority is

directed to receive and dispose of such appeal on merits without going into the question of limitation.

7. W.P.No.7356 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.No.8251 of 2024 is closed.

21.03.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Superintendent,
O/o. The Superintendent of GST and Central Excise
Coimbatore II-B Range
No.1441, Elgi Building,
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<u>SENTHILKUMAR RAMAMOORTHY,J</u>

rna

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