WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.7766 of 2024 and
WMP(MD) Nos.7088 & 7089 of 2024

Arumugam.S ... Petitioner

Vs

1.The Deputy Commissioner (ST(FAC),
282A, North Beach Road,
Thoothukudi.

2.The State Tax Officer,
Tuticorin II Assessment Circle,
Tuticorin. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned order passed by the second Respondent vide his order in Form GST ASMT-13 GSTIN 33AFQPA3924E1ZT/2022-23 dated 12-10-2022 and quash the same as it is illegal and and contrary to the provisions of the GST Act.

WEB COPY

For Petitioner : Mr.A.Satheesh Murugan
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner is a works contractor and registered under the GST Act, 2017. The petitioner has failed to pay the monthly returns for the month of August 2022 in GSTR3B within the stipulated time and therefore, an order of best assessment was passed on 12.10.2022. According to the petitioner, he has submitted the August 2022 monthly returns on 26.10.2022 along with the late fee as stipulated under the GST Act, 2017. However, the same has not been considered. Therefore, the petitioner has filed this writ petition challenging the best assessment order.

2. The learned counsel appearing for the petitioner submits that if a taxpayer files the monthly return within 30 days of the service of the assessment order, the best judgment order deemed to have been withdrawn as per Section 62 of the GST Act,2017. In

https://www.mhc.tn.gov.in/judis

WEB COPY

this case, the petitioner has filed the monthly returns pertaining to August 2022 on 26.10.2022 within 30 days of the service of the assessment order along with the required late fee and therefore, the impugned best assessment order has to be withdrawn. The relevant provision under Section 62 of the GST Act, 2017 is extracted as under:-

Assessment of non-filers of returns.

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

https://www.mhc.tn.gov.in/judis

WEB COPY

> (2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

3.This Court is *prima facie* satisfied to grant interim order in this writ petition. However, Mr. R.Suresh Kumar, learned Additional Government Pleader, who takes notice for the respondents on instructions provided to him by the officer submits that instead of granting interim order, the impugned order may be set aside and remanded back for fresh consideration as per section 62 of the GST Act, 2017.

4.In view of the above, this writ petition is allowed and the impugned order is hereby set aside and the matter is remanded back to the respondents for fresh consideration in the light of provision under Section 62 of the GST Act, 2017. Since the

https://www.mhc.tn.gov.in/judis

WEB COPY

impugned order is set aside, the bank attachment shall also be released. No costs. Consequently, connected Miscellaneous petitions are closed.

27.03.2024
(1/2)

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

To

1.The Deputy Commissioner (ST(FAC),
282A, North Beach Road,
Thoothukudi.

2.The State Tax Officer,
Tuticorin II Assessment Circle,
Tuticorin.

https://www.mhc.tn.gov.in/judis

WEB COPY

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.7766 of 2024 and
WMP(MD) Nos.7088 & 7089 of 2024

27.03.2024
(1/2)

https://www.mhc.tn.gov.in/judis