BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8242 of 2024
&
W.M.P.Nos.7443 and 7445 of 2024

Tvl. Rajaiah ... Petitioner

Vs.

The Deputy State Tax Officer-II
Ambasmudram Assessment Circle
Ambasamudram
Tirunelveli District ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the impugned assessment order on the file of respondent vide GSTIN:33CGMPR4007C1Z0/2022-2023 dated 09.08.202 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja Karthikeyan

For Respondent : Mr.R.Suresh Kumar, AGP (TAX)

O R D E R

Writ petition has been filed seeking to issue a Writ of Certiorari calling for the impugned assessment order on the file of respondent vide

GSTIN:33CGMPR4007C1Z0/2022-2023 dated 09.08.202 and quash the same as illegal and devoid of merits.

2.The petitioner has challenged the impugned assessment order dated 09.08.2023 passed for the assessment year 2022-2023. The operative portion of the assessment order reads as under:

> *" In view of the above, it was intimated to the taxpayer to pay the tax amount of CGST Rs.1,38,762/- and SGST Rs.1,38,762/-vide DRC 01A on 09.03.2023. The taxpayer replied on 11.03.2023 stating that the work was taken before the month of June 2022 and so we have paid the tax amount @ 6%. And then, this office show cause notice DRC 01 was issued to the taxpayer en 09.03.2023 stating to submit the records for the allotment of work such as M Book Copy, but the taxpayer did not filed any reply against this notice. Further, personal hearing notices were issued on 03.05.2023, 19.05.2023, 12.06.2023 and 10.07.2023. Even after receipt of the notices, they have not filed any reply or objections. Hence it is ascertained that the taxpayer have made less payment of tax which amounts to CGST of Rs. 1,38,762/- and SGST of Rs. 1,38,762/- Hence, it is proposed to levy tax, penalty under section 73 of TNGST Act 2017 and interest at 18% under section 50(3) for the above tax period.*

Accordingly, it is decided to confirm the demand of tax, penalty and 18% interest for the year 2022-2023 and order passed under section 73(1) of TNGST act 2017 by levying tax and penalty and 18% interest u/s.50(3) of TNGST Act as follows:

Sl. No	Tax period	Act	Tax	Penalty	Interest	Total
1	2022-2023	SGST	138762	13876	7596	160234
2		CGST	138762	13876	7596	160234
		Total	277524	27752	15192	320468

Note: Interest is calculated from the 21.04.2023 to the date of this order. If the taxable person makes payment of tax and other dues after due date, then interest should be calculated and paid voluntarily till the date of making payment of tax.

Summary of order in DRC-07 is issued electronically. ”

3. It is noticed that the petitioner was issued with a notice in Form GST-DRC-01 along with show cause notice dated 27.03.2023 and thereafter the petitioner was issued with personal hearing notices on 03.05.2023,19.05.2023,12.06.2023 and 10.07.2023. However, the petitioner failed to respond to the same. Under these circumstances the respondent left with no other option has confirmed the demand proposed in the show cause notice. The petitioner is now before this Court stating that the petitioner had replied to the above notice earlier which is not been

considered. It is further submitted that the petitioner was unaware of the date on which the hearing was fixed and thus failed to participate in the proceedings and has thus suffered the impugned order. It is further submitted that petitioner was also unaware that the impugned order was hosted in the web portal and it went unnoticed and hence prays for setting aside the impugned order.

4. Learned counsel for the respondent opposes to the Writ Petition on the ground that the petitioner has deliberately failed to reply to the show cause notice as also to the hearing notice which was sent by registered post. It is submitted that impugned order does not warrant any interference. In this connection, learned counsel for the respondent also relies on the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited***, reported in ***2020 SCC OnLine SC 440.*** He submits that therefore the Writ Petition is liable to be dismissed as the limitation for filing statutory appeal has also expired long before as the impugned order is dated 19.08.2023. It is further submitted that petitioner has also not produced any of the documents that were called for prior to the issuance of the notice which culminated in the impugned order. But

however, the petitioner failed to respond to the same.

5. Having considered the submissions of the learned counsel for the petitioner and the respondent, it appears that the petitioner is a small time contractor who has incurred the liability in the impugned order for a sum of Rs.2,77,524/-. The petitioner has also been imposed with penalty of Rs. 27,752/- and interest of Rs.15,192/-. It appears that petitioner is a semi literate person and may have not been fully aware of the implications of the notices issued by the Tax Department.

6. Considering the same, this Court is inclined to give a partial relief to the petitioner by setting aside the impugned order and remitting the case back to the respondent to pass a fresh order on merits within a period of 60 days from the date of receipt of a copy of this order provided the petitioner furnishes all the documents that were called for along with a reply to the notice and also pays a token amount equivalent to 10% of the disputed tax to the department. Subject to such compliance, respondent may proceed to adjudicate the issue afresh. In case, if the petitioner fails to comply with the above requirements, this order will stand automatically vacated in which case the respondents are at liberty to proceed against the

petitioner as if this order was not passed and proceed to recover the demand confirmed and penalty imposed and interest imposed against the petitioner in accordance with law.

7. Writ petition stands disposed of with the above observation. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

15.04.2024.

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

Copy To:

The Deputy State Tax Officer-II
Ambasmudram Assessment Circle
Ambasamudram
Tirunelveli District

C.SARAVANAN, J.

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W.P.(MD) No.8242 of 2024

15.04.2024