BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.8424 of 2024
and
W.M.P.(MD) Nos.7633 and 7634 of 2024

Shri. J.Milton Jeba Manickam
rep.by its Proprieor J.Milton Jeba Manickam,
S/o. John Devapitchai,
No.30, North Street, Karisalpatti,
Cheranmahadevi,
Tirunelveli 627 414. ... Petitioner

/vs./

The Assistant Commissioner of
Central GST and Central Excise,
No.7, Tractor Road,
NGO. A Colony,
Tirunelveli 627 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the impugned assessment order on the file of respondent vide DIN-20240159XO000000FA63 dated 17.01.2024 for the assessment year 2017 to 2020 and quash the same as illegal and devoid of merits.

For Petitioner : Mr.Raja.Karthikeyan

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

The petitioner has challenged the impugned assessment order dated 17.01.2024 passed by the respondent for the assessment year 2017-2018 to 2019-2020. The impugned order is challenged primarily on the ground that the demand has been confirmed for the assessment year 2017-2018 contrary to the limitation prescribed under Section 73 (10) of CGST Act, 2017. As far as the assessment years 2018-2019 and 2019-20220 are concerned, the respondent has wrongly imposed 100% penalty under Section 74 r/w Section 122(2)(b) of CGST Act, 2017. It is submitted that the demand that has been confirmed for the assessment year 2017-2018 is un-sustainable. It is further submitted that the imposition of 100% penalty under the aforesaid provision is also un-sustainable.

2.The learned Standing Counsel for the respondent, on instructions, would submit that the petitioner had taken a categorical stand that the demand that has been confirmed for the assessment year 2017-2018 pertains to the period under

TNVAT Act, 2006 as in force up to 30.06.2017 and since the petitioner failed to produce any records to substantiate that the petitioner has paid the tax under the VAT regime, earlier demand has been confirmed. It is submitted that either way there is suppression of fact by the petitioner and therefore, the impugned order does not call for any interference.

3.The learned Standing Counsel for the respondent would further submit that even otherwise, the petitioner has an alternate remedy, as there are several disputed questions of fact that arise for consideration, in view of the submissions made by the learned counsel for the petitioner.

4.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondent.

5.In my view, the challenge to the impugned assessment order does not call for any interference under Article 226 of the Constitution of India. If the petitioner is aggrieved, the petitioner can only file a statutory appeal under Section 107 of the GST Act before the appellate Authority. In case, it is the case of the petitioner that the assessment that has been confirmed for the assessment year 2017-2018 thus fell under the VAT regime, unless the assessment order was completed as is contemplated under the provisions of the TNVAT Act, 2006, the demand cannot be said to be time barred, in which case appropriate demand notice under Section 27 of the TNVAT Act, 2006 can be issued. These are aspects, which will have to be considered by the appellate Commissioner on merits and in accordance with law.

6.Therefore, the Writ Petition is liable to be dismissed. However, liberty is given to the petitioner to file a statutory appeal before the Appellate Authority within a period of 30 days from the date of receipt of a copy of this order.

7.As the limitation for filing the appeal has already expired on the date of filing of the present Writ Petition, the delay in filing the appeal is condoned. The petitioner shall pre-deposit the amount required under Section 107 of the CGST Act, 2017. On payment of the same within such time, the Appellate Commissioner shall entertain the appeal and dispose of the same on merits and in accordance with law, without reference to limitation under Section 107 of the CGST Act, 2017.

8.Accordingly, this Writ Petition stands dismissed with the above liberty No cots. Consequently, connected Miscellaneous Petitions are closed

03.04.2024

Index : Yes / No
Internet : Yes / No
mm

C.SARAVANAN, J.

mm

W.P.(MD) No.8424 of 2024

03.04.2024