BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8924 of 2024
and
W.M.P.(MD) No.8116 of 2024

Karuppiah ... Petitioner

Vs.

The State Tax Officer/
Commercial Tax Officer,
Thirupattur,
Sivagangai District. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records of the impugned proceedings in ZD331222126408S dated 30.12.2022 on the file of the respondent and quash the same.

For Petitioner : Mr.K.Jeyamohan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

O R D E R

Mr.R.Suresh Kumar, learned Additional Government Pleader, takes notice for the respondent. With the consent of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Writ Petition is disposed of, at the time of admission.

2. The petitioner has challenged the impugned order dated 30.12.2022 which is the summary of the order passed against the petitioner under Section 74 of the Tamil Nadu Value Added Tax Act, 2017. The petitioner has not enclosed the copy of the detailed order passed against the petitioner on the same day in GSTIN: 33DXVPK0032H1ZJ/2018-19 (DRC-07) in the affidavit filed along with this Writ Petition. A copy of the said detailed order has now been filed by the learned Additional Government Pleader for the respondent before this Court.

3. According to the petitioner, the petitioner had engaged an auditor who had filed a wrong return under Section 139 of the Income Tax Act, 1961 by boosting the sales turnover as Rs.3,77,37,307/- instead of Rs. 2,89,32,589/-. It is submitted that the petitioner was issued with a Show Cause Notice dated 21.10.2022, to which, the petitioner has also replied on 12.12.2022. It is submitted that since the respondent has passed the impugned order without hearing the petitioner, the impugned order is

nullity and is therefore liable to be set aside at this distant point of time though after lapse of more than 1 ½ years.

4. In this connection, the learned counsel for the petitioner would place reliance on the decision of the Custom, Excise and Service Tax Appellate Tribunal [CESTAT], rendered in the context of service tax demand, in an order dated 26.02.2024, in the case of **M/s.Gopi Chenna** Vs. **Commissioner of Central Tax, Medchal – GST** and **M/s.SIS Teleservices Pvt. Ltd.** Vs. **Commissioner of Central Tax, Secunderabad - GST**, in S.T.A.Nos.30412 and 30454 of 2023, placing reliance on the decision of the Chandigar Tribunal in **Indian Machine Tools Manufacturers Associate** Vs. **CCE, Panchkula**, 2023 (11) CENTAX 213 (9) (Tri-Chan).

5. It is submitted that the assessment based on returns filed under the Income Tax Act,1961 is impermissible under TNGST Act, 2017. That apart, the learned counsel for the petitioner would place reliance on the recent decision of the principal seat of this Court in the case of **M/s.Ralco Synergy Pvt. Ltd.** Vs. **The Joint Commissioner of State Tax and another**, in W.P.No.5554 of 2024, dated 05.03.2024, wherein, the Court

has set aside the order and remitted the case back, on payment of 5% of the disputed tax demand. In this case, according to the petitioner, he is now in penury and is working as an employee and has no means to pay the amount.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

7. As per the decision of the Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinadu and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC OnLine SC 440, this Writ Petition, at this distant point of time, is not maintainable. In any event, the fact remains that the petitioner has initiated proceedings for rectifying the returns filed under Section 139 of the Income Tax Act, 1961. However, the petitioner has not secured any order from the Assessing Officer to rectify the return filed by him for the relevant Assessment Year, based on which, the impugned assessment order has been passed under the provisions of the TNGST Act, 2017.

8. The case of the petitioner that no personal hearing was given to the petitioner also cannot be countenanced as the petitioner was indeed given an opportunity of being hearing by issuance of a personal hearing notices dated 22.11.2022 and 19.12.2022 before the impugned order dated 30.12.2022 was passed. It appears that the petitioner however did not opt to appear before the respondent before the impugned order was passed. The impugned order however considered the reply filed by the petitioner on 19.11.2022 and 12.12.2022.

9. In any event, the fact remains that the petitioner has still not obtained any order under Section 154 of the Income Tax Act, 1961 rectifying the return filed by him under Section 139 of the Income Tax Act, 1961. Therefore, even if the petitioner had participated in the proceedings for personal hearing, it would have been merely an empty formality. Even according to the petitioner, the petitioner has initiated proceedings under Section 154 of the Income Tax Act, 1961 for rectification of return filed by him under Section 139 of the Income Tax Act, 1961. However, it has not been disposed of so far.

10. Therefore, a partial relief can be granted to the petitioner by permitting the petitioner to file a statutory appeal before the Appellate

Authority i.e., Deputy Commissioner-ST (Appeal), Madurai, Tirunelveli Division, under Section 107 of the TNGST Act, 2017, within a period of 30 days from the date of receipt of a copy of this order, subject to the petitioner pre-depositing the amount as is contemplated under Section 107 of the TNGST Act, 2017 along with the proposed appeal.

11. On such presentation of the appeal and pre-deposit, the Appellant Authority shall entertain the appeal and dispose the same on merits and in accordance with law.

12. The respondent shall keep all recovery proceedings in abeyance for a period of 4 weeks from the date of receipt of a copy of this order.

13. This Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

10.04.2024
(2/2)

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

1.The State Tax Officer/Commercial Tax Officer,
Thirupattur,
Sivagangai District.

2.The Deputy Commissioner – ST (Appeal),
Madurai, Tirunelveli Division,
Commercial Taxes Building,
Dr.SVKS Thangaraj Salai,
Madurai – 625 020.

C.SARAVANAN, J.

JEN

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