



W.P.(MD) No.8899 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.8899 of 2024
and
W.M.P.(MD) Nos.8090 and 8091 of 2024**

Hotel Shri Swarna's Palace
represented by its Proprietor S.Pramila,
W/o.Sureshrengan,
75 B/2, Ground Floor,
North East Extension,
Thilainagar,
Salairoad, Trichy 620 017.

... Petitioner

/vs./

The Assistant Commissioner of GST and Central Excise,
Office of the Deputy Commissioner of GST and Central Excise,
Trichy 1 Division, No.1, Williams Road,
Cantonment,
Trichy 620 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the Respondent in Order-in-Original No.37/2022-ST



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Dated 10.05.2023 in DIN -20230559XN01003833C9 and quash the same as arbitrary and consequently direct the Respondent to repay the recovered amount to the petitioner.

For Petitioner : Mr.S.Muthuvenkatraman

For Respondent : Mr.R.Nandhakumar
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned Order in Original No.37/2022-ST dated 10.05.2023 bearing Ref.C.No.IV/19/263/2021-ST-Adjn.

2.By the aforesaid order, the respondent has confirmed the demand of Rs. 3,92,229/- from the petitioner being the service tax payable by the petitioner allegedly due for the period between April, 2016 and June, 2017 under proviso to Section 73(1) of the Finance Act, 1994. By the impugned order, the petitioner has also been imposed with interest under Section 75 of the Finance Act, 1994 and equal amount of penalty under Section 78(1) of the Finance Act, 1994, apart from penalty of Rs.10,000/- under Section 77(1)(c) and 77(2) of the Finance Act, 1994. The operative portion of the impugned order reads as under:-



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“i) I confirm the demand of the Service Tax (including Cess) of Rs.3,92,229/- from M/s Hotel Swarna's Palace, S.Pramila, Proprietrix, for the period from April, 2016 to June 2017 under proviso to Section 73 (1) of the Finance Act, 1994.

ii) I demand appropriate interest on the Service Tax liability demanded at Sl. No. (i) from M/s M/s Hotel Swarna's Palace, Trichy under Section 75 of the Finance Act, 1994; and

iii) I impose a penalty of Rs. 3,92,229/- on M/s Hotel Swarna's Palace, under the provisions of section 78(1) of the Finance Act, 1994.

iv) M/s Hotel Swarna's Palace, are informed that the penalty payable under Section 78 of the Finance Act, 1994 shall be 25% of the Service Tax amount determined as in Sl. No.(i) above, if the service tax amount demanded in Sl. No.(i) along with the Interest as demanded in Sl. No. (ii) above, with the reduced penalty amount is paid within a period of 30 (Thirty) days of the date of receipt of this Order-in-Original, in terms of the second and third proviso to Section 78 of the Finance Act, 1994.

v) I impose a Penalty Rs.10,000/- on the assessee under the provisions of section 77(1)(c) of the Finance Act, 1994 for non-production of documents.

vi) I impose a Penalty of Rs.10,000/- under the provisions of section 77(2) of the Finance Act, 1994 read with Section 70 of the Finance Act, 1994 for non-filing of periodical ST-3 returns pertaining to the period from April, 2016 to June 2017.”

3.It is the specific case of the petitioner that after the order was passed, the petitioner had given the papers to the Chartered Accountant, who failed to prefer an appeal in time. It is further submitted that the petitioner has paid the disputed tax on 14.03.2024 other than the penalty and the interest leviable. It is submitted



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that the impugned order is without merits and is liable to be set aside.

4.The learned Senior Standing Counsel for the respondent would oppose to the prayer in this writ petition and would rely 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*. It is submitted that as per the decision of the Hon'ble Supreme Court, no writ petition is entertainable beyond the statutory period, within which an appeal ought to have been filed before the Appellate Authority. It is submitted that the impugned order is dated 10.05.2023 and therefore, the appeal ought to have been filed within a period of two months before the Appellate Commissioner under Section 85 of the Finance Act, 1994 or within a period of 30 days thereafter by filing appropriate application for condoning the delay by giving sufficient cause for condoning the delay. It is submitted that the writ petition has been filed beyond 120 days and therefore is liable to be dismissed.



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

6.The petitioner has already paid the disputed tax on 14.03.2024. I see no impediment in giving liberty to the petitioner to challenge the impugned order before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order. If such an appeal is filed within such time, the Appellate Commissioner shall dispose of the appeal on merits and in accordance with law without reference to the limitation. The release of the vehicle is subject to the final outcome of the confiscation proceeding.

7.The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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C.SARAVANAN, J.

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