BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8985 of 2024
and
W.M.P.(MD) No.8172 & 8173 of 2024

M/s.Palaniyappa Store,
Rep. by its Proprietor,
Palaniappan Moorthy,
No.3349, South Main Street,
Pudukottai, Pudukottai District. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Pudukottai - 1, Assessment Circle,
Pudukottai. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 09.05.2023 passed by the respondent vide Proceedings GSTIN:33AAFPM9373H1ZH/2022-23 and quash the same as illegal.

For Petitioner : Mr.C.Senthil Murugan

For Respondent : Mr.J.K.Jeyaselan
Government Advocate

O R D E R

Mr.J.K.Jeyaselan, learned Government Advocate, takes notice for the respondent. With the consent of the learned counsel for the petitioner and the learned Government Advocate for the respondent, this Writ Petition is disposed of, at the time of admission.

2. The petitioner is aggrieved by the impugned order dated 09.05.2023 bearing reference No.GSTIN:33AAFPM9373H1ZH/2022-23 passed by the respondent for the assessment year 2022-2023. By the impugned order, the respondent has confirmed the following amounts:

Quantification:

Tax due	: Rs.14152.00 (CGST) and Rs.14152.00 (SGST)
Interest	: Rs.1805.54 (CGST) and Rs.1805.54 (SGST)
Penalty U/s. 74(9)	: Rs.14152.00 (CGST) & Rs.14152.00 (SGST)
Grounds	: Section 122(1)(xvi), 50(1), 74 of TNGST Act, 2017 and Rule 142(5) of CGST Rules 2017.

3. The impugned order is challenged primarily on the ground that the impugned order has been passed without following the principles of natural justice. That apart, the learned counsel for the petitioner would submit that although the petitioner is willing to deposit the disputed tax

and take up the issue before the Appellate Authority by filing and appeal under Section 107 of the Tamil Nadu General Sale Tax Act, 2017, the Appellate Authority is not entertaining the appeal as the limitation for filing appeal has expired long before. Hence, he prayed for quashing the impugned order as it has been passed without giving opportunity to the petitioner to participate in the proceedings.

4. The learned Government Advocate for the respondent, on the other hand, would submit that this Writ Petition at this distant point of time is not maintainable in the light of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC OnLine SC 440. Hence, he prays for dismissal of this Writ Petition.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6. The submission of the learned counsel for the petitioner that the petitioner is willing to deposit 100% of the disputed tax and the petitioner

may be permitted to file an appeal before the Appellate Authority stands recorded. Therefore, this Writ Petition is disposed of with following observations:

i. The petitioner is directed to deposit the disputed tax of Rs.14152.00 towards CGST and Rs.14152.00 towards SGST, within a period of 30 days from the date of receipt of a copy of this order.

ii. The petitioner shall also simultaneously file an appeal before the Appellate Authority under Section 107 of the TNGST Act, 2017.

iii. If such appeal is filed, the Appellate Authority shall entertain and dispose of the appeal without reference to the limitation on merits.

iv. In case the petitioner fails to either deposit the amount or file an appeal within such time, the respondent will be at liberty to proceed further for recovery of tax from the petitioner.

v. In case the petitioner succeeds in the appeal, the amount paid by the petitioner shall be refunded back to the petitioner. In case the assessment order is upheld by the Appellate Authority in the appeal to be filed by the petitioner, the respondent shall recover further amount towards interest and penalty if any from the petitioner.

vi. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.04.2024

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

JEN

Copy To:

The Assistant Commissioner (ST),
Pudukottai - 1, Assessment Circle,
Pudukottai.

C.SARAVANAN, J.

JEN

W.P.(MD) No.8985 of 2024
and
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