BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.10165 of 2024
and
W.M.P.(MD) No.9185 of 2024

Essel Enterprises,
Rep. by its Proprietor,
K.Lavanya,
W/o.Kawagaraj,
No.110A, South Raja Street,
Chinnakoil,
Tuticorin – 628 001. ... Petitioner

Vs.

1.The State Tax Officer,
Commercial Tax Department,
Tuticorin II Circle,
Tuticorin District.

2.The Commercial Tax Officer,
Tuticorin II Circle,
Tuticorin,
Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order in order No.GSTN:33DVPL8372NIZM/2018-2019 dated 01.08.2023, on the file of the 1st respondent and consequent order in Reference No.ZD330923006655F dated 01.09.2023, on the file of the 2nd respondent and quash the same.

For Petitioner	: Mr.J.Jeyakumaran
For respondents	: Mr.R.Suresh Kumar Additional Government Pleader

ORDER

The petitioner is challenging the impugned order, dated 01.08.2023 passed by the first respondent for the Assessment Year 2018-19 in his proceedings bearing reference GSTN:33DVPL8372NIZM/2018-2019.

2. By the impugned order, the respondent has confirmed the demand proposed in the show cause notice DRC01 dated 28.06.2023. Relevant portion of the impugned order is under:

Personal Hearing:

The taxpayer were afforded personal hearing as detailed below

Sl. No	Date of issue of intimation	Type of intimation	Date of hearing	Status
1.	28.06.2023	Show cause notice	10.07.2023	Not attended
2.	07.08.2023	Adjournment	16.08.2023	Not attended
3.	25.08.2023	Adjournment	31.08.2023	Not attended

In toto, 3 chances for personal hearing had been offered, which the taxpayer had not availed. The obligation to provide personal hearing as prescribed under section 75(5) of the TNGST Act , which says

75(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that ***no such adjournment shall be granted for more than three times to a person during the proceedings.***

The above provision had been duly honoured by the undersigned proper officer before issue of this order

Therefore, the undersigned proper officer is left with no other option, and hereby confirm the proposal to levy tax, and penalty u/s 74(1) for the tax period **2018-19** as under.

	IGST	CGST	SGST
Tax Due	1013889	91049	91049
Penalty u/s 74(1)	1013889	91049	91049
Paid	-	-	-

Section 74 of Goods and Services Act 2017 reads as under :-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may

serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax

(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Interest:

The quantification of interest u/s 50(1) has not been worked out as it can be done only after calculating the period between the due date and the date of payment of tax due.

3. The specific case of the petitioner is that the impugned order is without merits as the petitioner has correctly claimed the Input Tax Credit under the provisions of the TNGST Act, 2017, CGST Act, 2017 and IGST Act, 2017.

4. The learned counsel for the petitioner would submit that under similar circumstances, this Court has quashed the impugned order for the Assessment Year 2017-18 vide order in W.P(MD)No.8845 of 2024 dated 08.04.2024.

5. The learned counsel for the respondent would submit that this Writ Petition is without merits and is liable to be dismissed in view 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*** reported in ***2020 SCC Online SC 440*** and the Writ Petition, at this stage, cannot be countenanced.

6. The learned counsel for the respondent would submit that the petitioner may be directed to file a Statutory Appeal before the Deputy Commissioner (Appeal), Madurai, under Section 107 of the CGST and TNGST

Act, 2017.

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

8. I have perused the impugned order with the concern of the learned counsel for the respondent. This Writ Petition is disposed of at the time of the admission, since the impugned order has been passed without proper reply by the petitioner. Although the first respondent cannot be found fault with in passing the order, it is fit that the case be remitted back to the respondents. Hence, the impugned order shall be quashed and the case is remitted back to the respondents to pass fresh orders against the impugned order dated 01.08.2023 bearing reference No GSTIN:33ADVPL8372NIZM/2018-19 for the Assessment Year 2018-19.

9. The impugned order, which stands quashed, shall be corrigendum to the show cause notice issued to the petitioner in DRC01 dated 28.06.2023. It is accepted that the petitioner will file a detailed reply to the show cause notice as

also the impugned order, which shall stand quashed, within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall also deposit 10% of the disputed tax, as a condition. The respondents shall take up the case afresh and pass final orders on merit in accordance with law within a period of 60 days thereafter. The respondents are directed to hear the petitioner before passing the final order.

Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

25.04.2024

To

1.The State Tax Officer,
Commercial Tax Department,
Tuticorin II Circle,
Tuticorin District.

2.The Commercial Tax Officer,
Tuticorin II Circle,
Tuticorin,
Tirunelveli

C.SARAVANAN, J.

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