BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2024**

CORAM:

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

W.P.(MD) No.9991 of 2024
and
W.M.P.(MD) Nos.9040 and 9041 of 2024

Chandrasekaran ... Petitioner

/vs./

The Deputy Commissioner of GST and Central Excise,
Tirunelveli Division,
Central Revenue Building,
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, call for the records pertaining to impugned order-in-original No.12/DC/ST/2021 dated 13.07.2021 passed by the Respondent and quash the same.

For Petitioner : Mr.D.Prabhu Mukunth Arun

For Respondent : Mr.R.Nandha Kumar
Senior Panel Counsel

ORDER

Mr.R.Nandha Kumar, learned Senior Panel Counsel takes notice for the first respondent and Mr.V.Balasubramanian, learned counsel takes notice for the second respondent.

2.This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner, learned Senior Panel Counsel for the first respondent and the learned counsel for the second respondent.

3.In this writ petition, the petitioner has challenged the impugned Order in Original No.12/DC/ST/2021 dated 13.07.2021 bearing Ref.DIN. 20210759XO0000725178 C.No.V/ST/15/26/2020-Adjn.

4.By the impugned order, the respondent has confirmed the demand proposed in the show cause notice No.07/ST/AC-TVL/2020 dated 15.10.2020 bearing Ref.C.No.V/ST/15/26/2020-Adjn.

5.The admitted facts of the case is that the petitioner has not participated in the said proceeding. The explanation given by the petitioner is that the petitioner is an individual proprietor of a hotel in Tirunelveli. He was in Dubai, when the COVID-19 pandemic struck and there was lock down. It is submitted that the show cause notice as also the impugned Order in Original were received by the Manager of the petitioner, but was not informed to the petitioner and thus, the petitioner was unaware of the impugned order.

6.On coming to know that the impugned order has been passed, the petitioner filed an appeal in Appeal No.129/2023-ST(Madurai) before the Department of Revenue, Office of the Commissioner of GST and Central Excise (Appeals), Coimbatore, who by an order dated 30.10.2023 in Order in Appeal NO.056/2023-MDU-ST-APP, has rejected the appeal filed by the petitioner on the ground that it is beyond the statutory period of limitation prescribed under Section 85(3A) of the Finance Act, 1994.

7.The admitted position of the case is that the petitioner company has paid the amounts prior to the issuance of the show cause notice and thereafter, it is not disputed. The petitioner has also drawn attention to the Challans evidencing payment of the entire disputed tax.

8.The case of the petitioner is that there was jurisdictional error as much as the impugned proceeding has been initiated by the Officer located at Tirunelveli in respect of the dispute that had arisen in Chennai in respect of the rental income received by the petitioner from renting of the property.

9.That apart, it is submitted that the rental income of a residential house has also been taxed, which is contrary to the provisions of the Finance Act, 1994 and the Notification issued therein. Hence, he submits that the impugned order is liable to be quashed.

10.The learned counsel for the first respondent, on the other hand, would submit that the writ petition is devoid of merits, as the petitioner has left over the rights conferred under the statute. In this connection, the learned counsel for the first respondent would draw attention to the decision of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur*** reported in ***2008 (221) E.L.T. 163 (S.C)***. Additionally, the learned counsel for the first respondent would rely on the decision of (**blacso smith line**) to state that the writ petition at this distant point of time is not maintainable.

11.I have considered the arguments advanced by the learned counsel for the petitioner, learned Senior Panel Counsel for the first respondent and the learned counsel for the second respondent.

12.The petitioner no doubt has slept over his rights, inasmuch as the petitioner has failed to reply to the show cause notice No.07/ST/AC-TVL/2020 dated 15.10.2020 bearing Ref.C.No.V/ST/15/26/2020-Adjn.

13.Considering the fact that the petitioner has already paid the disputed tax and considering the fact that the petitioner is raising fundamental issue, which goes to the root of the issue, I am inclined to give a reprieve to the petitioner by quashing the impugned order and by remitting the case back to the respondent to pass fresh orders on merits and in accordance with law within a period of 90 days from the date of receipt of a copy of this order, subject to the petitioner filing a detailed reply to the show cause notice No.07/ST/AC-TVL/2020 dated 15.10.2020 bearing Ref.C.No.V/ST/15/26/2020-Adjn. Subject to the petitioner filing the reply, the impugned Order in Original No.12/DC/ST/2021 dated 13.07.2021 bearing Ref.DIN. 20210759XO0000725178 C.No.V/ST/15/26/2020-Adjn shall be treated as corrigendum. Considering the fact that the petitioner has already paid the tax, the order attaching the bank account of the petitioner with the concerned bank shall stand vacated. The petitioner is directed to co-operate with the respondent.

14.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **24.04.2024**
Internet : Yes / No
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C.SARAVANAN, J.

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