BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13477 of 2024
and
W.M.P.(MD) Nos.11890 & 11891 of 2024

Tvl.R.S.K.Agency,
Represented by its Proprietor Sudhalakshmi,
No.18-7-75, Rajiv Nagar,
Sivagurunathapuram,
Tenkasi – 627 859. ... Petitioner

Vs.

The Deputy State Tax Officer – 2,
Shencottai Assessment Circle,
Shencottai,
Tenkasi. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned assessment order on the file of the respondent vide GSTIN:33IJXPS4295D1ZF/2017-18 dated 21.09.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

For petitioner : Mr.Raja.Karthikeyan

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

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ORDER

Heard learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. The petitioner is aggrieved by the impugned order dated 21.09.2023 bearing reference in GSTIN:33IJXPS4295D1ZF/2017-18 for the assessment year 2017-18.

3. It is the case of the petitioner that although the petitioner had replied ASMT-10 dated 31.10.2022 *vide* reply dated-nil, the petitioner failed to reply to rest of the notices that preceded the impugned order.

4. The case of the petitioner is that the petitioner is a small time dealer and the demand that has been confirmed in the impugned order arises belatedly on account of the discrepancies between the amount of the credit reflected in Form GSTR 2A, in which, auto populated Input Tax Credit is reflected and the Returns filed by the petitioner in Form GSTR 3B.

5. It is submitted that the petitioner has sufficient records to substantiate that the petitioner has correctly availed Input Tax Credit.

6. It is further submitted that the petitioner may be given one opportunity to explain the case and the petitioner is willing to deposit 25% of the disputed tax.

7. The learned Additional Government Pleader for the respondent, on the other hand, would submit that the petitioner was negligence in neither filing reply to the notices that preceded the impugned order nor participate in the personal hearing nor filing an appeal before the Appellate Deputy Commissioner (ST)(GST), Tirunelveli nor approached this Court at the earlier point of time.

8. Hence, this Writ Petition is liable to be dismissed on account of latches, in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

9. It is further submitted that the appeal against the aforesaid impugned order will also be barred by limitation, in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

10. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, considering the fact that the petitioner appears to be a small time dealer and considering the fact that the petitioner is willing to deposit 25% of the disputed tax, as a condition, for the case to be heard again, this Court is inclined to grant partial relief to the petitioner by quashing the impugned order and remitting back the case to the respondent to pass fresh orders on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order, subject to the petitioner depositing 30% of the disputed tax within a period of 30 days from the date of receipt of a copy of this order from its Electronic Cash Register and subject to filing reply to the show cause notices that preceded the impugned order.

11. The impugned order, which stands quashed, shall be treated as addendum to the show case notice that preceded the impugned order. Needless to state, before passing the orders, the petitioner shall be heard.

This Writ Petition is disposed of with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

24.06.2024

To

The Deputy State Tax Officer – 2,
Shencottai Assessment Circle,
Shencottai,
Tenkasi.

C.SARAVANAN, J.

apd

W.P.(MD) No.13477 of 2024

24.06.2024