WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.06.2024**

CORAM:

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

W.P.(MD) No.11634 of 2024
and
W.M.P.(MD) No.10361 of 2024

M/S.Arun Enterprises,
Proprietorship,
D.No.1/283, Mela Street,
Neively,
Musiri Taluk, Trichy 621 217,

rep. by its Proprietor,
P.Arun Kumar ... Petitioner

/vs./

1.The Assistant Commissioner of GST & Central Excise,
Division II,
Tiruchirappalli.

2.The Superintendent of GST & Central Excise,
Review/TRC Section,
Division-II,
Tiruchirappalli.

3.The Superintendent of GST & Central Excise,
Musiri Range,
Tiruchirappalli. ... Respondents

https://www.mhc.tn.gov.in/judis

WEB COPY

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the 1st respondent in Order in Original No.56/2022-ST IN GEX COM/ADJN/ST/2480/2021-GST-DIV-2-TRY-COMMRTE-TRICHY DIN 20221159XN000000D83C dated 25.11.2022 and quash the same.

For Petitioner : Mr.C.Ezhilarasu

For Respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

ORDER

Mr.N.Dilip Kumar, learned Senior Standing Counsel takes notice for the respondents.

2.The petitioner is before this Court against the Order in Original No. 56/2022-ST of the first respondent dated 25.11.2022 bearing Ref.No.GEX COM/ADJN/ST/2480/2021-GST-DIV-2-TRY-COMMRTE-TRICHY.

3.The first respondent has passed the impugned order based on the best judgment, as the petitioner appears to have failed to participate in the proceeding. The petitioner submits that the impugned demand is un-sustainable.

https://www.mhc.tn.gov.in/judis

WEB COPY

4.On the other hand, Mr.N.Dilip Kumar, learned Senior Standing Counsel for the respondents would draw attention to para 10 of the impugned order, wherein it has been clearly stated that despite personal hearing fixed and serve of the show cause notice, the petitioner failed both to reply to the show cause notice and to participate in the personal hearing and therefore, left with no other option, the assessment was completed based on best judgment method by taking note of the difference between the income declared in the returns filed under the Income Tax Act, 1961 and the returns filed by the petitioner in Form ST-3 for the relevant assessment year, namely 2016-17 under the Finance Act, 1994.

5.That apart, the learned counsel for the respondent would submit that the Writ Petition is liable to be dismissed on account of latches apart from the fact that the law has been settled by 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***.

https://www.mhc.tn.gov.in/judis

WEB COPY

6.It is noted that SCN.No.33/2021-ST dated 21.10.2021 was issued after the implementation of GST on 01.07.2017 in respect of a demand under the Finance Act, 1994. Therefore, to obviate any inconvenience to the Commissioner (Appeals), as the Commissioner (Appeals) has no power to remand the case back to the Original Authority, this case can be remanded back after quashing the impugned order.

7.Having considered the submissions of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and recording the submission of the learned counsel for the petitioner that the petitioner will deposit 25% of the disputed tax within a period of four weeks from today, the impugned order is quashed.

8.It is made clear that the impugned order is quashed subject to the above compliance by the petitioner and the case is remitted back to the first respondent only because the impugned order has been passed after the implementation of GST on 01.07.2017 in respect of a demand under the Finance Act, 1994.

https://www.mhc.tn.gov.in/judis

WEB COPY

9.The Writ Petition stands allowed, accordingly. The impugned order, which stands quashed, shall be treated as corrigendum to the show cause notice dated 21.10.2021 issued to the petitioner. The petitioner shall reply to the same within a period of 30 days from today, failing which the first respondent is at liberty to re-confirm the amount based on the available materials. No costs. Consequently, connected Miscellaneous Petition is closed.

04.06.2024

Index : Yes / No
Internet : Yes / No
mm

https://www.mhc.tn.gov.in/judis

WEB COPY

C.SARAVANAN, J.

mm

W.P.(MD) No.11634 of 2024

04.06.2024

https://www.mhc.tn.gov.in/judis