BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13138 of 2024
and
W.M.P.(MD)No.11641 of 2024

Tvl.Habeeb Store,
Represented by its Proprietor Habeebulla,
No.48B, Nellaapar Kovil,
Melamada Street,
Tirunelveli – 627 006. ... Petitioner

Vs.

The State Tax Officer,
Tirunelveli. ... 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 order on the file of the respondent vide GSTIN:33AGGPH5665Q1ZV/2019-20 dated 18.10.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2019-20.

For petitioner : Mr.Raja.Karthikeyan

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

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ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the impugned order dated 18.10.2023 passed for the assessment year 2019-20. The impugned order precedes the notices in Form GST ASMT-10 dated 03.03.2022 and Form GST DRC 01 dated 19.04.2023.

3. It is noticed that the three personal hearing notices were sent to the petitioner on 10.07.2023, 13.09.2023 and 21.09.2023. Despite the same, the petitioner has not appeared for the personal hearing and no supportive documents were produced and therefore, based on the available materials, the impugned order has been passed.

4. The case of the petitioner is that the petitioner is a small scale operator and was unaware of the notices that were posted in the GST common portal. It is further submitted that the petitioner was also unaware of the impugned order

dated 18.10.2023 being sent to the petitioner on the GST Common Portal.

5. The above submission is opposed by the learned Government Advocate for the respondent, on the ground that the Writ Petition is hopelessly time barred and therefore, liable to be dismissed, on account of latches, in the light of the decision of 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.***

6. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the TNGST Act, 2017, as held 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*** and submitted that this Writ Petition is liable to be dismissed.

7. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent, this Court is of the view that the petitioner may have a case on merits and therefore, discretion is exercised in favour of the petitioner and quashed the impugned

order, subject to the petitioner depositing 10% of disputed tax to the credit of the respondent within a period of 30 days from the date of receipt of this order.

8. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice that preceded the impugned order.

9. It is expected that the petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall, thereafter, pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months, subject to the above deposit. Needless to state, the petitioner shall be heard before passing the order.

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

Index : Yes / No **21.06.2024**
Internet : Yes / No
apd
To
The State Tax Officer,
Sengottai Assessment Circle, Tenkasi.

<u>C.SARAVANAN, J.</u>

apd

W.P.(MD) No.13138 of 2024

21.06.2024