BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13799 of 2024
and
W.M.P.(MD)No.12142 of 2024

Tvl.Kodai Automobiles Limited,
Represented by its Managing Director
Jayakumar Thomas Jayaraj, ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Palayamkottai,
Tirunelveli.

2. Deputy Commissioner (GST) (Appeals)(State Tax) Madurai and Tirunelveli,
CT Buildings, AR Line Road,
Palayamkottai,
Tirunelveli. ... Respondents

(R2 is *suo motu* impleaded vide order dated 27.06.2024
in W.P.(MD)No.13799 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of CERTIORARIFIED MANDAMUS calling for the impugned assessment order on the file of respondent vide GSTIN.

33AABCK1651R1ZC/2017-18 dated 28.12.2023 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.J.K.Jayaselan Government Advocate

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ORDER

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

2. The petitioner is before this Court against the impugned order dated 28.12.2023 bearing reference in GSTIN:33AABCK1651R1ZC passed by the respondent for the assessment year 2017-18. The impugned order has preceded the notice, which has been replied by the petitioner and the personal hearing which has been appeared by the petitioner. However, the petitioner has not filed statutory appeal in time. Hence, the petitioner is before this Court.

3. 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.***

4. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments 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 these Writ Petition is liable to be dismissed.

5. On the other hand, the learned counsel for the petitioner submits that the petitioner has been mulcted with unjust demand and that the petitioner had not utilised the trans credit of Rs.42 lakhs, which has not been transferred till date, despite the petitioner's best efforts. That apart, the learned counsel for the petitioner submits that the petitioner has become a sick unit and its bank account has become a non-performing asset as the proceedings under the SARFAESI Act, 2002, have been initiated in crippling operations.

6. The learned counsel for the petitioner further submits that the petitioner may be given one opportunity to explain the case afresh with the respondent.

7. Having considered the submissions made by the petitioner and the learned Government Advocate for the respondent, this Court is of the view that the issue regarding merits cannot be decided under Article 226 of the Constitution of India. At best, the petitioner can be given a liberty to file statutory appeal before the Deputy Commissioner (GST) (Appeals)(State Tax), Madurai and Tirunelveli, although the limitation is expired as on date.

8. This Court is, therefore, inclined to exercise its discretion in favour of the petitioner, considering the fact that the petitioner is facing severe financial constraints and is being proceeded with under the provisions of SARFAESI Act, 2002 and its account had become a non-performing asset.

9. Since the Deputy Commissioner (GST) (Appeals)(State Tax), Madurai and Tirunelveli, is not a party in this proceedings, the Deputy Commissioner (GST) (Appeals)(State Tax), Madurai and Tirunelveli is *suo motu* impleaded as

second respondent.

10. The petitioner shall file an appeal within a period of 30 days from the date of receipt of a copy of this order, subject to the petitioner depositing 10% of the disputed tax from its electronic cash register, as is contemplated under Section 107 of respective GST enactments. Subject to such compliance, the petitioner's appeal shall be entertained by the second respondent and disposed of on merits and in accordance with law without reference to the limitation as expeditiously as possible preferably within a period of three months thereafter.

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

Index : Yes / No **27.06.2024**
Internet : Yes / No
apd

To

1.The Assistant Commissioner (ST),
Palayamkottai,
Tirunelveli.

2. Deputy Commissioner (GST) (Appeals)(State Tax) Madurai and Tirunelveli,
CT Buildings, AR Line Road,
Palayamkottai,
Tirunelveli.

C.SARAVANAN, J.

apd

W.P.(MD) No.13799 of 2024

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