BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.06.2024**

CORAM:

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

W.P.(MD) No.11759 of 2024
and
W.M.P.(MD) Nos.10500 and 10501 of 2024

M/S.NSK Builders Private Limited,
rep. by its Director,
NSK Kalairaja
... Petitioner

/vs./

Proper Officer/Sales State Tax Officer,
Office of the Joint Commissioner (ST) (Intelligence),
Tiruchirapalli Division,
C/107, B3 2nd Floor,
North Extension,
Sastri Road, Thillai Nagar,
Trichy 620 018.
... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for records of the impugned Order passed by the Respondent in DRC 07 in reference No.ZD331223272680N, dated 30.12.2023.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

Heard Mr.G.Natarajan, learned counsel for the petitioner and Mr.J.K.Jayaselan, learned Government Advocate for the respondent.

2.The petitioner is before this Court against the impugned order dated 30.12.2023 passed by the respondent for the assessment year 2017-18.

3.The petitioner was issued with a show cause notice in DRC-01 on 29.09.2023. However, the petitioner failed to reply to the same and thereafter, the petitioner was issued with personal hearing notices and the petitioner had sought for repeated adjournments.

4.It is the case of the petitioner that bulk of the demand that has been confirmed in the impugned order pertains to services provided by the petitioner before the implementation of GST on 01.07.2017. It is submitted that after the show cause notice was issued, the petitioner was attempting to get the details based on the measurement books maintained by the Government Department, for whom the petitioner provided services/supplied services and that due to the intervening monsoon and flood that effected, the petitioner was unable to procure the same and therefore, the petitioner could not reply to the show cause notice or attend during personal hearing.

5.The learned counsel for the petitioner submits that the petitioner may be given one opportunity to explain the case, as bulk of the demand for a sum of Rs. 1,51,78,828/- is wholly un-sustainable. As far as the other demand is concerned, the petitioner submits that the petitioner will be able to convince the Department based on the submissions to be made.

6.The learned Government Advocate for the respondent on the other hand would submit that the petitioner has an alternate remedy under Section 107 of the respective GST enactment before the Appellate Deputy Commissioner and therefore, the present Writ Petition is liable to be dismissed.

7.That apart, it is submitted that the impugned order is dated 30.12.2023, whereas the present writ petition has been filed on 04.06.2024 beyond the period of limitation and therefore, in terms of the decision of 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***, the Writ Petition is liable to be dismissed.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

9.Having perused the impugned order and having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, I am of the view that this is a fit case for remanding the case back by setting aside the impugned order subject to the petitioner depositing 10% of the disputed tax to the credit of the Government from its Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order.

10.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice in Form DRC-01 dated 29.09.2023. The petitioner shall file a reply together with all the evidences, which the petitioner seeks to rely within such time or within such period as may be extended by the respondent. It is expected that the entire proceeding will be completed by the respondent within a period of 6 months from the date of receipt of a copy of this order.

11.With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.06.2024

Index : Yes / No
Internet : Yes / No
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To
Proper Officer/Sales State Tax Officer,
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North Extension,
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C.SARAVANAN, J.

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W.P.(MD) No.11759 of 2024

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