BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12363 of 2024
and
W.M.P.(MD)Nos.10945 & 10946 of 2024

Tvl.SS Impex
Represented by its Erstwhile Partner P.Senthilkumar ... Petitioner

Vs.

1.The Assistant Commissioner[ST],
O/o. The Assistant Commissioner [ST],
Thanjavur-II Assessment Circle,
II Floor, C.T.Building, Suchidananda Moopanar Road,
Thanjavur.

2.The Branch Manager,
Indian Bank,
22/47, Sanjeeva Narayana Street,
Perambalur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the impugned order passed by the 1st respondent in TIN:33156309859/2015-16 dated 05.10.2021 and consequential impugned recovery notice No.R.C.182/2022/A2 dated 14.05.2024 and quash the same.

For petitioner : Mr.S.Muthuvenkatraman

For respondents : Mr.R.Suresh Kumar
Additional Government Pleader for R1

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ORDER

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

2. The petitioner has challenged the impugned assessment order dated 05.10.2021 passed for the assessment year 2015-16.

3. It is the case of the petitioner that the petitioner is the Erstwhile Partner of Tvl.SS Impex and that the petitioner resigned from the partnership firm with effect from 01.02.2020 due to his strained relationship with the other partners.

4. It is submitted that the impugned order that precedes the notice dated 17.03.2020, which was not brought to the knowledge of the petitioner and therefore, the impugned order came to be passed without the petitioner/the erstwhile partner filing reply to the aforesaid show cause notice.

5. It is, therefore, submitted that the petitioner came to know about the impugned order only after the impugned recovery notice dated 14.05.2024 was served on Indian Bank attaching the petitioner's bank account to the tax liability of Rs.21,66,903/- and penalty of Rs.32,61,936/-.

6. The learned counsel for the petitioner would submit that an opportunity is given to the petitioner to define the liability of the partnership firm.

7. Per contra, the learned Additional Government Pleader for the first respondent would submit that this Writ Petition is without any merits and liable to be dismissed and would submit that this Writ Petition, at this upholding point of time, is barred by limitation in terms of decision rendered by 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.***

8. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the first respondent and considering the fact that an *ex parte* order has been passed long after the petitioner resigned from the partnership firm from 01.02.2020 and considering the fact that the show cause notice itself came to be issued after the petitioner resigned from the partnership firm, this Court is inclined to exercise the discretion in favour of the petitioner by setting aside the impugned order.

9. The impugned order is therefore quashed and the case is remitted back to the first respondent to pass fresh orders subject to the petitioner depositing Rs.7.5 lakhs within a period of 30 days from the date of receipt of a copy of this order.

10. It is expected that the petitioner will file its reply within 30 days from the date of receipt of a copy of this order with above deposit.

11. The impugned order, which stands quashed, shall be treated at addendum to the show cause notice that preceded the impugned order. The first respondent shall pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months thereafter. The first respondent is at liberty to direct the second respondent to transfer Rs.7.5 lakhs towards arrears of tax, in case the amounts are available. Subject to such recovery for payment, the impugned order is quashed.

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

Index : Yes / No **14.06.2024**
Internet : Yes / No
apd

To

1.The Assistant Commissioner[ST],
O/o. The Assistant Commissioner [ST],
Thanjavur-II Assessment Circle,
II Floor, C.T.Building, Suchidananda Moopanar Road,
Thanjavur.

C.SARAVANAN, J.

apd

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