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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.11786 of 2024
and
W.M.P.(MD).Nos.10521 & 10522 of 2024

M/s.Srinivasan Charitable and Educational Trust,
Represented by its Authorised Signatory,
Sri Selvakumar,
No.274, C Siruvachur,
Perambalur – 621 212. ... Petitioner

Vs.

The Assistant Commissioner of CGST & Central Excise,
O/o.the Assistant Commissioner of GST & Central Excise,
Trichy II Division,
No.1, Williams Road, Cantonment,
Tiruchirapalli – 620 001. ... Respondent

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 respondent in Order in Original No.05/2023-GST dated 29.08.2023 in DIN-20230859XN0200818931 and quash the same.

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For petitioner : Mr.M.N.Bharathi

For respondent : Mr.R.Nanda Kumar
Senior Standing Counsel

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ORDER

This Writ Petition is disposed of, after hearing the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent and with the consent of the learned Senior Standing Counsel for the respondent dispensing with the requirement for filing of counter.

2. In this Writ Petition, the petitioner has challenged the impugned order in Original No.05/2023-GST dated 29.08.2023 bearing File No.GEXCOM/ADJN/GST/1563/2022-CGST-DIV-2-TRY-COMMRTE-TRICHY.

3. By the impugned order, the respondent has confirmed the following amounts on the petitioner:

> *"I. I confirm the demand amount of Rs.27,66,596/- (Rupees Twenty-Seven Lakhs Sixty-Six Thousand Five Hundred and Ninety-Six only) (CGST Rs.13,83,298 + SGST Rs.13,83,298) being the ineligible input tax credit on account of mismatch between GSTR-3B and GSTR-2A returns for the period from July, 2017 to March,2018 from M/s.Dhanalakshmi Srinivasan*

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Charitable and Educational Trust, 274-C, Siruvachur, Perambalur 621212 under Section 73(1) of the CGST Act, 2017 readwith similar provisions under Tamil Nadu GST Act, 2017;

II. I confirm the interest at the rate of 18% per annum on the amount confirmed in S.No.(I) above from them under Section 50(3) of the CGST Act, 2017 readwith similar provisions under Tamil Nadu GST Act, 2017;

III. I impose a penalty amount of Rs.2,76,660/- (Rupees Two Lakhs Seventy-Six Thousand Six Hundred and Sixty only) on them under Section 73(9) of the CGST Act, 2017/Tamil Nadu GST Act, 2017 read with Section 122 of CGST Act, 2017/Tamil Nadu GST Act, 2017 for the contraventions mentioned in para (4) above."

4. The challenge to the impugned order is primarily on the ground that the impugned order was passed in the name of M/s.Dhanalakshmi Srinivasan Charitable and Educational Trust. It is submitted that the impugned order, which preceded the impugned show cause notice No.5/2022-GST dated 02.12.2022, has also been issued in the wrong name though with the correct GSTIN No. 33AAGTS1793N1ZX of the petitioner herein namely, Srinivasan Charitable and Educational Trust.

5. It is submitted that this fact was also brought to the knowledge of the respondent, in an undated reply to the show cause notice, pursuant to which, the

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personal hearing was also held on 16.08.2023 by the respondent, wherein, the respondent has correctly given to the name of the petitioner.

6. It is submitted that the impugned order was posted in the GST common portal, which went unnoticed and that the petitioner realised that the impugned order has been passed only after the petitioner received threat from the respondent to pay the amount. It is submitted that in case the petitioner is given one opportunity to file an appeal, they will be able to went out its grievances against the impugned order.

7. It is submitted that the petitioner has a good case on merits before the Appellate Commissioner, however, the appeal, at this stage, will not be entertained as the GST portal will be locked for receiving any appeal against the impugned order. The learned Senior Standing Counsel for the respondent had, submits that the Writ Petition is devoid of merits and is liable to be dismissed in the light of the decisions of 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 in the case of ***Assistant Commissioner***

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(CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited reported in ***2020 SCC Online SC 440.***

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent, the Court is of the view that a liberty can be given to the petitioner to file statutory appeal before the Appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order, subject to the petitioner depositing mandatory 10% of the disputed tax within such period. Subject to such compliance, the petitioner's appeal shall be entertained by the Appellate Commissioner under Section 107 of the GST Act, 2017 and disposed of on merits and in accordance with law, within a period of three months thereafter. Needless to state, the petitioner shall also be heard.

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

Index : Yes / No
Internet : Yes / No
apd

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To

The Assistant Commissioner of CGST & Central Excise,
O/o.the Assistant Commissioner of GST & Central Excise,
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C.SARAVANAN, J.

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