BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2024**

CORAM:

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

W.P.(MD) Nos.12369 and 12370 of 2024
and
W.M.P.(MD) Nos.10953, 10954, 11026 and 11027 of 2024

Nallathambi Construction and Engineering Works,
rep. by its Proprietor
Nallathambi

... Petitioner in both W.Ps.,

/vs./

The Deputy State Tax Officer -1,
Nanguneri Assessment Circle,
Tirunelveli District.

... Respondent in both W.Ps.,

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the Respondent vide his order in GSTIN. 33AKDPN0304M1ZH/2018-2019 and GSTIN. 33AKDPN0304M1ZH/2022-2023 dated 31-07-2023 and 16.08.2023 respectively and quash the same as it is illegal and in gross violation of Principles of Natural Justice and further direct the respondent to re-do the assessment afresh after providing an opportunity of Personal Hearing as per the provisions of the GST Act.

For Petitioner
in both W.Ps., : Mr.A.Satheesh Murugan

For Respondent
in both W.Ps., : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

Heard Mr.A.Satheesh Murugan, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondent.

2.The petitioner has approached this Court to quash the impugned order dated 31.07.2023 and 16.08.2023 bearing Ref.Nos. GSTIN. 33AKDPN0304M1ZH/2018-2019 and 33AKDPN0304M1ZH/2022-2023 passed by the respondent.

3.The learned counsel for the petitioner submits that the notices, which preceded the impugned order, although were sent to the petitioner, went unnoticed, as they were hosted in the GST common portal. It is submitted that the petitioner is a small time operator and is not fully conversion with the architecture of the GST common portal and therefore failed to notice the communication of the notices as also the impugned order that came to be passed on 31.07.2023 and 16.08.2023.

4.The learned counsel for the petitioner would further submit that if an opportunity is given, the petitioner will be able to demonstrate before the respondent that the impugned demand that has been confirmed is un-just and is un warranted. The learned counsel for the petitioner would further submit that the petitioner is willing to deposit 10% of the disputed tax.

5.*Per contra*, the learned Additional Government Pleader for the respondent on the other hand would submit that the writ petition is liable to be dismissed in the light 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***.

6.It is submitted that even the appeal at this stage will be time barred in terms of the limitation prescribed under Section 107 of the TNGST Act, 2017, in the light of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

7.Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and having considered the notices that were issued and the averments made in the affidavit, this Court is inclined to exercise its discretion in favour of the petitioner after recording the submission of the learned counsel for the petitioner that the petitioner is willing to deposit 10% of the disputed tax to the credit of the respondent.

8.Recording the same, these Writ Petitions stand allowed. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued to the petitioner. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall pay the amount from its Electronic Cash Register within the aforesaid period. It is submitted that the respondent will pass final orders on merits and in accordance with law within a period of 3 months thereafter.

9.Since the petitioner's bank account has been frozen, the same is ordered to be de-frozed after recovering the aforesaid 10% amount, ie., if any amount is available in the petitioner's bank account. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No **13.06.2024**
Internet : Yes / No
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To

The Deputy State Tax Officer -1,
Nanguneri Assessment Circle,
Tirunelveli District.

C.SARAVANAN, J.

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W.P.(MD) Nos.12369 and 12370 of 2024

13.06.2024