BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12069 of 2024
and
W.M.P.(MD) Nos.10734 & 10736 of 2024

Tvl.ASM International
Rep. by its Proprietor Mr.Pratiban,
Muthumalai Buildings,
No.176, Mani Nagar,
2nd Street, Palai Road,
Tuticorin – 628 003. ... Petitioner

Vs.

The Assistant Commissioner (ST) -2,
Tuticorin - 2 Assessment Circle,
Tuticorin. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the respondent *vide* his order in GSTIN.33COVPP2254Q1Z2/2019-2020 dated 08.05.2023 and quashing the same as it is illegal and in gross violation of principles of natural justice and further directing 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 : Mr.A.Satheesh Murugan

For Respondent : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

Mr.R.Sureshkumar, learned Additional Government Pleader takes notice for the respondent.

2. With the consent of both the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, at the time of admission, this Writ Petition is taken up for final disposal.

3. In this Writ Petition, the petitioner has challenged the impugned order dated 08.05.2023 passed by the respondent for the Assessment Year 2019-2020.

4. It is the case of the petitioner that although the petitioner had filed a reply dated 15.12.2022 in response to the notice dated 23.11.2022 which was issued to the petitioner prior to the impugned order dated 08.05.2023, the said reply of the petitioner has not been considered in the impugned order.

5. It is the further case of the petitioner that the actual difference between the input tax credit claimed in the returns filed by the petitioner in Form GSTR - 3B and auto-populated information in Form GSTR - 2A is only Rs.71,798/- each towards SGST and CGST totalling to Rs.1,43,596/-. However, the respondent in the impugned order has concluded that the difference amount is Rs.4,85,131/- each towards SGST & CGST, totalling to Rs.9,70,262/-. The learned counsel for the petitioner would therefore submit that the petitioner may be given one more opportunity as the impugned order has been passed without considering the actual difference in Form GSTR - 3B and in Form GSTR - 2A.

6. This Writ Petition is opposed by the learned Additional Government Pleader for the respondent on the ground that this Writ Petition is liable to be dismissed on account of latches. It is submitted that this Writ Petition is hopelessly time-barred as the impugned order has been passed as early as 08.05.2023, whereas, this Writ Petition has been filed on 03.06.2024.

7. The learned Additional Government Pleader for the respondent relied on the decisions of the Hon'ble Supreme Court in **M/s.Singh**

Enterprises Vs. **Commissioner of Central Excise, Jamshedpur and others**, (2008) 3 SCC 70 and in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC OnLine SC 440 and prayed for dismissal of this Writ Petition.

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, I am of the view that the petitioner can be given a partial relief by permitting him to file a statutory appeal before the Appellate Authority. Therefore, a liberty is given to the petitioner to file a statutory appeal before the Appellate Authority, subject to the petitioner pre-depositing 25% of the disputed tax with the respondent, within a period of 30 days from the date of receipt of a copy of this order. It is made clear that pre-deposit and the proposed appeal should be made/filed within the aforesaid period of 30 days from the date of receipt of a copy of this order.

9. Subject to the compliance of the same, the appeal of the petitioner shall be entertained and disposed of on merits and in

accordance with law, as expeditiously as possible, preferably, within period of six (6) months from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before the appeal is disposed of on merits.

10. Accordingly, this Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.06.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

The Assistant Commissioner (ST) -2,
Tuticorin - 2 Assessment Circle,
Tuticorin.

C.SARAVANAN, J.

JEN

W.P.(MD) No.12069 of 2024
and
W.M.P.(MD) Nos.10734 & 10736 of 2024

10.06.2024