BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.13486 of 2024
and
W.M.P.(MD) Nos.11901 & 11902 of 2024

Tvl.Easan Electric,
Represented by its Proprietor N.Arunachalam,
351/1, Illathu Pillaimar Complex,
Mudangiar Road, Rajapalayam,
Virudhunagar, Tamil Nadu – 626 117. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tamilnadu Commercial Taxes Department,
Rajapalayam 2 Assessment Circle. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned assessment order on the file of the respondent vide GSTIN:33ADQPA9958G1Z7/2017-18 dated 28.11.2023 and quash the same as illegal and devoid of merits and direct the respondent to re-do the assessment proceedings for the year 2017-18.

For petitioner : Mr.Raja.Karthikeyan

For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

Heard learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. The petitioner is before this Court against the impugned order dated 28.11.2023 bearing reference in GSTIN:33ADQPA9958G1Z7 for the assessment year 2017-18.

3. The impugned order that precedes the show cause notice in ASMT 10 dated 17.08.2023 and the notice in GST DRC 01 dated 19.09.2023 and personal hearing notices dated 21.11.2023, 24.11.2023 and 27.11.2023.

4. The petitioner, has neither replied to any of the notices issued to the petitioner nor participated in the personal hearings that was granted pursuant to the personal hearing notices, thus, has suffered in the impugned order dated

28.11.2023. The petitioner has also not filed statutory appeal in time and has not approached this Court in time. Hence, it is submitted by the learned Additional Government Pleader for the respondent that this Writ Petition is liable to be dismissed on account of latches as the issue has attained finality.

5. It is further submitted that the filing of statutory appeal at this point of time is barred by limitation, as per the decision rendered by 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***.

6. The learned counsel for the petitioner would submit that the Commercial Tax Department has wrongly assumed that the petitioner had purchased huge quantity of raw materials from the suppliers, based on the information in GSTR 2A, which is an auto populated record, whereas the Input Tax Credit that has been claimed by the petitioner is confined to Rs.6,88,304/-

7. The submission of the learned counsel for the petitioner is that the petitioner has not purchased huge quantity of raw material from the suppliers and

further, submits that the petitioner may be given fresh opportunity to explain the difficulties.

8. Having considered the arguments advanced by the learned counsel for the petitioner and learned Additional Government Pleader for the respondent, this Court is inclined to grant partial relief to the petitioner by quashing the impugned order and remits the case back to the respondent to pass a fresh order on merits and in accordance with law as the petitioner may have a case on merits.

9. Under these circumstances, the petitioner is directed to deposit 10% of the disputed tax from its electronic cash register together with the reply to the notice issued prior to the impugned order, within 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. It is expected that the final order will be passed within three months thereafter. Needless to state, before passing the order, the petitioner shall be heard.

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

Index : Yes / No **24.06.2024**
Internet : Yes / No
apd

To

The Assistant Commissioner (ST),
Tamilnadu Commercial Taxes Department,
Rajapalayam 2 Assessment Circle.

C.SARAVANAN, J.

apd

W.P.(MD) No.13486 of 2024

24.06.2024