



W.P.(MD) No.14238 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.14238 of 2024
and
W.M.P.(MD) Nos.12482 to 12484 of 2024**

M/S.Akshaya Mobiles,
represented by its Properitor,
Mohan.

... Petitioner

/vs./

1.Deputy Commercial Tax Officer,
Tuticorin -3, Assessment Circle,
No.6 R, North Cotton Road,
Thoothukudi,
Tamil Nadu 628 001.

2.The Bank Manager,
Tamil Nadu Mercantile Bank Ltd.,
97/8/30 Ground Floor,
Palayamkottai Road,
SIPCOT,
Thoothukudi 628 008

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1st respondent in Order No. ZD331223266305P dated



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29.12.2023 and quash the same as illegal and remand the matter for reconsideration.

For Petitioner : Mr.S.Muthu Kumar Raja

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

ORDER

With the consent of the learned Additional Government Pleader appearing on behalf of the respondents and after dispensing with the requirement of filing of counter, this Writ petition is disposed of at the time of admission.

2.In this writ petition, the petitioner has challenged the impugned assessment order dated 29.12.2023 passed by the first respondent for the assessment year 2017-18.

3.It is informed by the learned counsel for the petitioner that the petitioner was unaware of the impugned order passed on 29.12.2023. That apart, it is submitted that the petitioner was also unaware of the show cause notice in DRC 01 dated 29.09.2023.



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4.It is submitted that the petitioner was also unaware of the impugned order that came to be passed on 29.12.2023. Hence, he prays for setting aside the impugned order.

5.It is further submitted that the petitioner be given one opportunity to explain the case afresh. It is submitted that the petitioner is willing to deposit any amount that the Court may impose.

6.Opposing the prayer, the learned Additional Government Pleader for the respondents would submit that the writ petition is devoid of merits 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* and the appeal will also be time barred in terms of the decision of the Hon'ble Supreme Court in *Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur* reported in *2008 (221) E.L.T. 163 (S.C)*.



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7. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, with a view to balance the interest of the petitioner and the Revenue, this Court is inclined to intervene by quashing the impugned order subject to the petitioner depositing 10% of the disputed tax from its Electronic Cash Register and filing a reply to the show cause notice issued to the petitioner earlier within a period of 30 days from the date of receipt of a copy of this order.

8. Subject to the above compliance, the first respondent shall take up the case and dispose of the same afresh on merits and in accordance with law as expeditiously as possible, preferably within a period of 60 days thereafter.

9. It is needless to state that before passing fresh order, the petitioner shall be heard. It is made clear that in case, the petitioner fails to deposit the aforesaid amount in time, the first respondent is at liberty to proceed against the petitioner, as if no orders were passed granting relief in this writ petition.



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10. Subject to the petitioner depositing 10% of the disputed tax from its Electronic Cash Register or appropriating of the aforesaid amount from the petitioner's Bank A/C.No.156100050303311, the second respondent Bank shall de-freeze the petitioner's Bank A/C.No.156100050303311.

11. The Writ Petition stands disposed of, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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02.07.2024

To

1. Deputy Commercial Tax Officer,
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C.SARAVANAN, J.

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