BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12701 of 2024
and
W.M.P.(MD)Nos.11284 & 11285 of 2024

Tvl.Sivapreetha Traders,
Represented by its Proprietor A.Sivakumar. ... Petitioner

Vs.

The State Tax Officer-,
Thanjavur -1 Assessment Circle,
Thanjavur. ... Respondent

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 impugned order passed by the respondent vide his order in GSTIN: 33EAIPS0735J1ZJ/2017-18 dated 28.12.2023 uploaded in the GST Portal in Form GST DRC 07 on 31.12.2023, quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections and to produce documents.

For petitioner : Mr.S.Raja Jeya Chandra Paul

For respondent : Mr.J.K.Jayaseelan
Government Advocate

*****

ORDER

Heard learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The petitioner is before this Court against the impugned order dated 28.12.2023 passed by the respondent for the assessment year 2017-18 under the provisions of respective GST enactments, 2017.

3. The impugned order precedes a notice in GST DRC 01A dated 25.09.2023, show cause notice in GST DRC 01 dated 29.09.2023 and three personal hearing notices issued to the petitioner on 27.09.2023, 16.10.2023 and 07.12.2023.

4. By the impugned order, the respondent has confirmed the demand proposed in the show cause notice to the petitioner as the petitioner neither availed the opportunity of personal hearing nor filed any reply.

5. The case of the petitioner is that the petitioner was unaware of the aforesaid order or notices that preceded the impugned order as they were posted in the GST common portal and that the petitioner/Proprietor of the petitioner namely, A. Sivakumar was hospitalised due to ill health.

6. The records filed by the petitioner seems that the respondent has also recovered a sum of Rs.41,475/- from the petitioner's account on 30.05.2024.

7. It is the further case of the petitioner that the respondent has also unilaterally recovered further amount from the petitioner's Electronic Credit Ledger, although the powers that is vested with the respondent is only to block such account.

8. On the other hand, the learned Government Advocate for the respondent would submit that this Writ Petition is without merits and liable to be dismissed.

9. It is submitted that this Writ Petition has been filed on 06.06.2024 in

respect of the assessment order that came to be passed on 28.12.2023. Therefore, in the light of the decision of Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440,*** this Writ Petition is liable to be dismissed.

10. It is further submitted that the appeal remedy was not also available to the petitioner as the limitation prescribed under Section 107 of GST Act, 2017 has been expired. In this connection, a reference is made to the decision 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.***

11. Considering the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, considering the fact that the amount of tax involved is only Rs.1,31,998/- (Rs.65,992/- x 2) and considering the fact that a sum of Rs.41,475/- has already been recovered form the petitioner towards arrears of due under the impugned order, the

impugned order stands quashed by giving liberty to the petitioner to make fresh representation before the respondent within 30 days from the date of receipt of a copy of this order.

12. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice that preceded the impugned order.

13. The respondent shall endeavour to pass fresh order on merits and in accordance with law as expeditiously as possible preferably within three months thereafter. Needless to state, the petitioner shall be heard before passing the order.

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

Index : Yes / No
Internet : Yes / No
apd

14.06.2024

To
The State Tax Officer-,
Thanjavur -1 Assessment Circle,
Thanjavur.

C.SARAVANAN, J.

apd

W.P.(MD) No.12701 of 2024

14.06.2024