



W.P.(MD) No.12213 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12213 of 2024

and

W.M.P.(MD) Nos.10838 & 10839 of 2024

Thangadurai Nadar Steels & Hardware and Paints,
4/173-12, Athimarapatti Road,
Veerapandian Nagar,
Muthaiahpuram,
Thoothukudi.

Represented through its Proprietor Rajkumar
Vs.

... Petitioner

1.The Joint Commissioner (ST),
O/o.the Joint Commissioner,
Thoothukudi.

2.The Deputy Commissioner(ST),
(GST Appeal),
Madurai & Tirunelveli.

3.The State Tax Officer,
O/o the Assistant Commissioner (ST),
Thoothukudi II Circle,
282A, North Beach Road,
Thoothukudi.

... Respondents



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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 impugned order Roc.33ADBPR7621Q2Z3 dated 07.02.2024 and impugned order A1/566&567/2024 dated 29.02.2024 passed by the 2nd respondent and set aside the same and to direct the 2nd respondent to provide an opportunity to the petitioner to hear his appeal on merit as the impugned order is invalid, violated the principles of natural justice.

For petitioner : Mr.V.Rajiv Rufus

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

ORDER

This Writ Petition is taken up for disposal, after hearing the learned counsel for the petitioner and the Additional Government Pleader for the respondents.

2. The petitioner is aggrieved by the impugned order dated 29.02.2024 passed by the second respondent rejecting the petitioner's appeal against the order bearing reference No.GSTIN:33ADBPR7621Q2Z3/2017-18 dated 06.10.2023.

3. The petitioner has filed the appeal before the second respondent 14



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days after the limitation expired for filing the appeal and thus, the appeal has been rejected by the Appellate Commissioner.

4. The learned counsel for the petitioner would submit that the petitioner has a clear case on merits and therefore, an opportunity may be given to the petitioner as the delay is marginal.

5. The learned Additional Government Pleader for the respondents, on the other hand, would submit that neither this Writ Petition is maintainable nor the appeal beyond the statutory period of limitation is maintainable, in the light of 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 and in the latest decision 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

6. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and



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considering the fact that the delay is only a marginal delay, though beyond the statutory period of limitation, this Court is of the view that the impugned order bearing reference No.A1/566 & 567/2024 dated 29.02.2024 is set aside and the matter is remitted back to the Appellate Commissioner to dispose of the same on merits and in accordance with law, subject to the petitioner depositing additionally 20% of the disputed tax over and above 10% is as contemplated under Section 107 of the respective GST enactments.

7. It is expected that the Appellate Commissioner will dispose of the appeal on merits and in accordance with law within the period of three months from today. The petitioner shall be heard without reference of limitation on merits.

8. Since the impugned order is quashed, the third respondent is directed to issue suitable directions to the Tamil Nad Mercantile Bank Ltd. to de-freeze the account of the petitioner, after deducting 20% from the petitioner's account towards pre-deposit.



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With the above liberty, this Writ petition stands allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

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C.SARAVANAN, J.

apd

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