BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.12520 of 2024
and
W.M.P(MD).No.11183 of 2024

Sri Gomathi Mills Private Limited,
Represented by its Managing Director V.S.Velayutham,
No.39-1, 39-2,
No.6, Road, Veeravanallur,
Tirunelveli – 627 426. ... Petitioner

Vs.

The State Tax Officer,
Ambasamudram Assessment Circle,
Commercial Tax New Building,
Civil Supply Godown Backside,
Tenkasi Main Road,
Vagalkulam Ambasamudram – 627 401. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned order of the respondent passed GSTIN:33AAECS3501R1Z8/2017-18 dated 29.12.2023 and quash the same insofar as the demands confirmed against the petitioner, and further direct the respondent to re-do the assessment in accordance with law after providing sufficient opportunity including personal hearing.

For petitioner : Mr.N.Murali

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

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ORDER

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

2. The petitioner has filed this Writ Petition against the impugned order dated 29.12.2023 passed under Section 74 of the TNGST Act, 2017 for the assessment year 2017-18.

3. At the outset, the learned counsel for the petitioner has drawn the attention of this Court to the medical certificate of the hospital at page 145 and stated that the petitioner could not file statutory appeal in time before the Appellate Commissioner as during the period when the appeal was to be filed, the Authorised Signatory/Managing Director of the petitioner was hospitalised due to Acute Ischemic Stroke (Left cerebellar infarct) and Type II Diabeties Mellitus.

4. On merits, the learned counsel for the petitioner would submit that although the petitioner had been taken this plea before the respondent, the show cause notice dated 28.09.2023 in GST DRC 01 was issued under Section 74 of the TNGST Act, 2017, without any ingredients for invoking the delay period under the aforesaid provisions and therefore, the impugned order, which has been passed, is nullity and without jurisdiction.

5. That apart, it is submitted that the demand that has been confirmed in the impugned order arises on account of the discrepancies between the amount of the credit reflected in Form GST DRC 2A, which is auto populated Input Tax Credit and the Returns filed by the petitioner in Form GST DRC 3B.

6. It is submitted that there is no case made out for invoking extended period of limitation under Section 74 of the TNGST Act, 2017.

7. An specific query is that the date, when the petitioner had filed the Return in GSTR 09 being annual return, the learned counsel for the petitioner

confirmed that the same was filed only on 31.08.2023 under the Amnesty scheme.

8. The notice that has been issued on 28.09.2023, indicating that it is issued, after the Return filed by the petitioner on 31.08.2023. Therefore, even if the notice was issued wrongly under Section 74, it has to be construed in time in terms of under Section 73 of the TNGST Act, 2017.

9. Either way, the issue would involve appreciation of facts and therefore, it is best left to be decided by the authorities prescribed under the Act. Although there is a delay in approaching this Court by way of this Writ Petition to quash the impugned order, a discretion can be exercised in favour of the petitioner, considering the fact that the Managing Director of the petitioner was hospitalised during March 2024.

10. The Court is therefore inclined to give liberty to the petitioner to file statutory appeal within a period of 30 days from the date of receipt of a copy of this order.

11. In case such appeal was filed within such time, the Deputy Commissioner (GST Appeal), Madurai, shall consider and dispose of the appeal on merits and in accordance with law as expeditiously as possible preferably within a period of three months thereafter.

12. Needless to state, the petitioner shall make mandatory pre-deposit contemplated under Section 107 of the TNGST Act, 2017 and the petitioner shall also be heard before passing of the final orders.

13. It is made clear that in case the petitioner failed to file the statutory appeal within stipulated time, the respondent is at liberty to proceed against the petitioner in the manner known to law.

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

Index : Yes / No
Internet : Yes / No
apd

13.06.2024

To
The State Tax Officer,
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C.SARAVANAN, J.

apd

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