BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.12360 of 2024
and
W.M.P.(MD) Nos.10942 to 10944 of 2024

M/S.S.S.R.Connect,
represented by Proprietor,
Muthukumar ... Petitioner

/vs./

The Deputy State Tax Officer,
Tuticorin – III Assessment Circle,
Thoothukudi District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the Impugned order dated 30.12.2023 in Ref.No.ZD331223275119J passed by the respondent and QUASH the same and also direct the respondent to afford a chance to clear explanation the show cause notice dated 28.09.2023 issued by the respondent.

For Petitioner : Mr.S.Muthu Kumar Raja
For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard Mr.S.Muthu Kumar Raja, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondent.

2.The petitioner has approached this Court to quash the impugned order dated 30.12.2023 passed by the respondent under Section 73 of the TNGST Act, 2017.

3.The learned counsel for the petitioner submits that the notices, which preceded the impugned order, although were sent to the petitioner, went unnoticed, as they were hosted in the GST common portal. It is submitted that the petitioner is a small time operator and is not fully conversant with the architecture of the GST common portal and therefore failed to notice the communication of the notices as also the impugned order that came to be passed on 30.12.2023.

4.The learned counsel for the petitioner would further submit that if an opportunity is given, the petitioner will be able to demonstrate before the respondent that the impugned demand that has been confirmed is un-just and was un warranted. The learned counsel for the petitioner would further submit that the petitioner is willing to deposit 10% of the disputed tax.

5.*Per contra*, the learned Additional Government Pleader for the respondent on the other hand would submit that the writ petition is liable to be dismissed 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***.

6.It is submitted that even the appeal at this stage will be time barred in terms of the limitation prescribed under Section 107 of the TNGST Act, 2017, in the light of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

7.Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and having considered the notices that were issued and the averments made in the affidavit, this Court is inclined to exercise its discretion in favour of the petitioner after recording the submission of the learned counsel for the petitioner that the petitioner is willing to deposit 10% of the disputed tax to the credit of the respondent.

8.Recording the same, the Writ Petition stands allowed. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued to the petitioner earlier. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall pay the amount from its Electronic Cash Register within the aforesaid period. It is submitted that the respondent will pass final orders on merits and in accordance with law within a period of 3 months thereafter.

9.Since the petitioner's bank account has been frozen, the same is ordered to be de-frozen after recovering the aforesaid 10% amount, if any amount is available in the petitioner's bank account.

No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm

13.06.2024

To

The Deputy State Tax Officer,
Tuticorin – III Assessment Circle,
Thoothukudi District.

C.SARAVANAN, J.

mm

W.P.(MD) No.12360 of 2024

13.06.2024