BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM:

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

W.P.(MD) No.13810 of 2024
and
W.M.P.(MD) No.12146 of 2024

Tvl.S.M.Pavers,
rep. by Partner K.Mosses ... Petitioner

/vs./

The Assistant Commissioner (ST),
Sivagangai,
Commercial Tax Building,
Sivagangai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN. 33CFIPM3372J1ZA/2017-18 dated 12.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

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

ORDER

The petitioner is before this Court against the impugned order dated 12.12.2023 passed by the respondent for the assessment year 2017-18.

2.The impugned order has preceded the notices in ASMT-10, DRC -01A and DRC-01. However, the petitioner has failed to reply to the same. The petitioner was also issued with personal hearing notices, which were also not responded to by the petitioner and thus, the respondent has passed the impugned order on 12.12.2023.

3.It is the case of the petitioner that the petitioner was unaware of the aforesaid notices that were sent to the petitioner in the GST common portal. He submits that the petitioner be given one opportunity, as the demand was confirmed based on the discrepancy between the credit availed and the credit that was auto populated in Form GSTR-2A. It is submitted that long after the credit was availed and utilized by the petitioner, the credit has been denied vide impugned order dated 12.12.2023.

4.On the other hand, the learned Additional Government Pleader for the respondent would submit that the writ petition is devoid of merits and is liable to be dismissed, in view 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***.

5.That apart, it is submitted that even the appellate remedy is barred in view 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)***. Hence, he prays for dismissal of this writ petition.

6.Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and considering the fact that the dispute pertains to the initial period after the roll out of GST with effect from 01.07.2017. Therefore, this Court is inclined to exercise its discretion partly in favour of the petitioner subject to the petitioner depositing 15% of the disputed tax from its Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order.

7.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice dated 04.05.2023 in DRC -01A to the petitioner. The petitioner shall file a consolidated reply with a period of 30 days from the date of receipt of a copy of this order together with the aforesaid pre-deposit.

8.Subject to the above compliance, the respondent shall proceed to pass a fresh order on merits and in accordance with law within a period of 3 months thereafter. It is needless to state that the petitioner shall be heard before final orders are passed in the *de novo* proceedings.

9.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No **27.06.2024**
Internet : Yes / No
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To

The Assistant Commissioner (ST),
Sivagangai,
Commercial Tax Building,
Sivagangai.

C.SARAVANAN, J.

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W.P.(MD) No.13810 of 2024

27.06.2024