BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM:

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

W.P.(MD) No.13835 of 2024
and
W.M.P.(MD) Nos.12166 and 12168 of 2024

Tvl.Sri Vallimurugan Agency,
rep. by its Proprietor
A.Murugan ... Petitioner

/vs./

The State Tax Officer (FAC),
Sengottai Assessment Circle,
Tenkasi District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the Respondent vide his order in GSTIN. 33CVOPM1010K1ZQ/2017-2018 dated 20-12-2023 and quash the same as it is illegal and in gross violation of Principles of Natural Justice and further direct the respondent to re-do the assessment afresh after providing an opportunity of Personal Hearing as per the provisions of the GST Act.

For Petitioner : Mr.A.Satheesh Murugan

For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

The petitioner is before this Court against the impugned order dated 20.12.2023 passed by the respondent for the assessment year 2017-18.

2.The impugned order has preceded the notices in ASMT-10, GST DRC 01A and GST DRC 01. The petitioner was also issued with personal hearing notices. However, the petitioner failed to respond to the same and thus, the impugned order has been passed on 20.12.2023.

3.The learned counsel for the petitioner would submit that the petitioner is a small time operator and was unaware of the notices that preceded the impugned order. It is submitted that for the same reason, the petitioner was also unaware of the impugned order that came to be passed on 20.12.2023. Hence, he prays for setting aside the impugned order.

4.It is further submitted that the disputed tax of Rs.55,528/- (Rs.27,764/- x 2 towards CGST and SGST), has been paid by the petitioner on 10.04.2024. He submits that the petitioner may be given one opportunity to explain the case.

5.On the other hand, the learned Government Advocate 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***.

6.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.

7.Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, this Court is inclined to exercise its discretion in favour of the petitioner by quashing the impugned order and by remitting the case back to the respondent to pass a fresh order on merits and in accordance with law.

8.The petitioner shall deposit 10% of the disputed tax amount to the credit of the respondent, if the same has not been paid earlier, within a period of 30 days from the date of receipt of a copy of this order. However, it is made clear that the interest, if any to be paid by the petitioner, will have to be paid from the date of due date.

9.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice dated 19.09.2023 issued 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.

10.Subject to the above compliance, the respondent shall 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.

11.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
mm

27.06.2024

To

The State Tax Officer (FAC),
Sengottai Assessment Circle,
Tenkasi District.

C.SARAVANAN, J.

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W.P.(MD) No.13835 of 2024

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