BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.14443 & 14444 of 2024
and
W.M.P.(MD) Nos.12677 & 12708 of 2024

Tvl.MRS Tools and Metals,
Rep. by Partner Balasubramanian,
No.202, South Masi Street,
Madurai - 625 001. ... Petitioner in both W.Ps.

Vs.

The State Tax Officer,
South Avanimool Street Circle,
Madurai. ... Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the impugned Assessment Orders on the file of the respondent vide GSTIN: 33AAJFM1108L1ZG/2017-18 dated 22.12.2023 & GSTIN: 33AAJFM1108L1ZG/2020-21 dated 07.09.2023 and quashing the same as illegal and devoid of merits and directing the respondent to redo the assessment proceedings for the Assessment Years 2017-2018 & 2020-2021.

For Petitioner
in both W.Ps. : Mr.Raja.Karthikeyan

For Respondent
in both W.Ps. : Mr.J.K.Jayaselan
Government Advocate

COMMON ORDER

Mr.J.K.Jayaselan, learned Government Advocate, takes notice for the respondent.

2. By this common order, these Writ Petitions are being disposed of, at the time of admission, after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondent.

3. In these Writ Petitions, the petitioner has challenged the following impugned Assessment Orders:-

Sl. No.	W.P.(MD) No.	Date of the impugned order	A.Y.	Amount
1	14443/2024	22.12.2023	2017-18	Rs.7,34,346/-
2	14444/2024	07.09.2023	2020-21	Rs.3,33,684/-

4. The case of the petitioner is that the petitioner failed to respond to the Show Cause Notice dated 22.09.2023 for the Assessment Year 2017-2018 which culminated in the impugned Assessment Order dated 22.12.2023.

5. As far as the case for the Assessment Year 2020-2021 is concerned, it is submitted that the petitioner had purchased a commercial vehicle for transportation of its staffs and that the petitioner has not availed any input tax credit on the GST paid on commercial vehicle purchased for transportation of its staffs. However, the respondent has concluded that the petitioner has availed input tax credit. It is submitted that the credit was blocked and the same is evident from the returns.

6. It is submitted that merely because the credit was shown in the auto-populated returns in Form GSTR-2A *ipso facto* would not mean that input tax credit was availed by the petitioner in Form GSTR-3B for discharging the tax liability. That apart, it is submitted that the electronic records are available and therefore, the impugned Assessments Orders are liable to be set aside.

7. The learned Government Advocate for the respondent would submit that these Writ Petitions are liable to be dismissed on account of latches in terms 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**, 2020 SCC OnLine SC 440. That apart, it is submitted that even otherwise, the appellate remedy before the Appellate Commissioner would also have expired 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**, (2008) 3 SCC 70.

8. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

9. I am of the view that the petitioner may have a case to explain as far as the confirmation of demand *vide* Assessment Order dated 22.12.2023 for the Assessment Year 2017-2018 impugned in W.P.(MD) No.14443 of 2024 is concerned. Therefore, the impugned Assessment

Order dated 22.12.2023 is set aside and the case is remitted back to the respondent subject to the petitioner paying 25% of the dispute tax from the Electronic Cash Ledger for the Assessment Year 2017-2018 and subject to the petitioner replying to the Show Cause Notice dated 22.09.2023 that preceded with the impugned Assessment Order dated 22.12.2023, within a period of 30 days from the date of receipt of a copy of this order.

10. The impugned Assessment Order dated 22.12.2023 which stands quashed in this order shall be treated as Addendum to the Show Cause Notice dated 22.09.2023.

11. As far as the confirmation of demand *vide* Assessment Order dated 07.09.2023 for the Assessment Year 2020-2021 which is impugned in W.P.(MD) No.14444 of 2023 is concerned, there appears to be a non-application of mind.

12. Under these circumstances, the impugned Assessment Order dated 07.09.2023 is also set aside and the case is remitted back to the respondent subject to the petitioner paying 25% of the dispute tax from

the Electronic Cash Ledger for the Assessment Year 2020-2021, within a period of 30 days from the date of receipt of a copy of this order.

13. The impugned Assessment Order 07.09.2023 for the Assessment Year 2020-2021 which stands quashed in this order shall be treated as Addendum to the Show Cause Notice dated 04.03.2023. The petitioner shall file additional reply to the same, if any, within a period of 30 days from the date of receipt of a copy of this order.

14. In the result, both the impugned Assessment Orders are quashed. Both the cases are remitted back to the respondent to pass fresh orders on merits. The impugned Assessment Orders shall be treated as Addendum to the Show Cause Notices issued to the petitioner for the respective Assessment Years. The petitioner shall file its reply and pay 25% of the disputed tax for the respective Assessment Years, from its Electronic Cash Ledger, within a period of 30 days from the date of receipt of a copy of this order.

15. Subject to the above, the respondent shall pass fresh orders on merits and in accordance with law for both the Assessment Years, within a

period of 2 months thereafter. Needless to state, the petitioner shall be heard before the orders are passed. In case, the petitioner fails to comply with the above directions, it shall be construed that these Writ Petitions were dismissed in which case the respondents will be at liberty to proceed against the petitioner in the manner known to law.

16. Accordingly, these Writ Petitions stand disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.07.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

The State Tax Officer,
South Avanimool Street Circle,
Madurai.

C.SARAVANAN, J.

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