BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.13546 & 13547 of 2024
and
W.M.P.(MD) Nos.11943, 11945, 11953 & 11954 of 2024

In W.P.(MD)No.13546 of 2024:

M/s.Jayanth Ship Chandlers,
Represented by its Proprietor S.Jayasingh Raja. ... Petitioner

Vs.

The State Tax Officer,
Tuticorin II Assessment Circle,
Tuticorin. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent vise his order No.GSTIN 33AFDPJ2418R1ZB/2017-18 dated 12.12.2023 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.R.Suresh Kumar
Additional Government Pleader

In W.P.(MD)No.13547 of 2024:

M/s.Jeyanth Logistics Private Limited,
Represented by its Managing Director S.Jeyasingh Raja. ... Petitioner

Vs.

The State Tax Officer,
Ettayapuram Assessment Circle,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent vise his order No.GSTIN 33AABCJ3654P2Z9 dated 26.12.2023 Tax period 2017-18 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.R.Suresh Kumar
Additional Government Pleader

*****

COMMON ORDER

By this common order, both the Writ Petitions are disposed of, with the consent of the learned Additional Government Pleader for the respective respondents.

2. The petitioners in W.P.(MD)Nos.13546 and 13547 of 2024 are aggrieved by the impugned orders dated 12.12.2023 and 26.12.2023, respectively, passed for the assessment year 2017-18. The impugned orders precede the notice in Form GST DRC 01A dated 19.08.2023 and 11.09.2023, respectively and Form GST DRC 01 dated 21.09.2023 and 28.09.2023, respectively.

3. The case of the petitioners is that the petitioners are small scale operators and were unaware of the notices that were posted in the GST common portal. It is further submitted that the petitioners were also unaware of the impugned orders dated 12.12.2023 and 26.12.2023, respectively, being sent to the respective petitioners on the GST Common Portal.

4. The above submission is opposed by the learned Additional Government

Pleader for the respondent in respective Writ Petitions, on the ground that the Writ Petitions are hopelessly time barred and therefore, liable to be dismissed, on account of latches, in the light of the decision of the Hon'ble Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440.***

5. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments as held by the Hon'ble Supreme Court in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70*** and submitted that these Writ Petitions are liable to be dismissed.

6. Having considered the arguments advanced by the learned counsel for the respective petitioners and the learned Additional Government Pleader for the respective respondents, this Court is of the view that the petitioners may have a case on merits and therefore, discretion is exercised in favour of the petitioners and quashed the impugned order, subject to the respective petitioners depositing

10% of disputed tax to the credit of the respective respondents from their Electronic Cash Register within a period of 30 days from the date of receipt of this order.

7. The impugned orders, which stand quashed, shall be treated as addendum to the show cause notices that preceded the impugned orders.

8. It is expected that the respective petitioners shall file their reply within a period of 30 days from the date of receipt of a copy of this order. The respective respondents shall, thereafter, pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months, subject to the above deposit. Needless to state, the petitioners shall be heard before passing the order.

This Writ Petition is disposed of, with above direction. No costs. Consequently, connected miscellaneous petitions are closed.

25.06.2024

Index : Yes / No
Internet : Yes / No
apd

To

1.The State Tax Officer,
Tuticorin II Assessment Circle,
Tuticorin.

2. The State Tax Officer,
Ettayapuram Assessment Circle,
Tuticorin.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.13546 & 13547 of 2024

25.06.2024