BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14096 of 2024
and
W.M.P.(MD)Nos.12373 of 2024

M/s.Cognax Automation Private Ltd.,
Represented by its Director B.Heerajan. ... Petitioner

Vs.

The State Tax Officer (Main),
Tuticorin-II,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of of Certiorari to call for the records in the impugned order No.ZD330722012576L dated 28.07.2022 issued by the respondent and quash the same as without jurisdiction and clear violation of statutory provisions.

For petitioner : Mr.S.Karunakar
For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

Heard learned counsel for the petitioner and learned Additional

Government Pleader for the respondent.

2. The petitioner is aggrieved by the impugned order bearing reference No.ZD330722012576L passed on 28.07.2022 in Form GST DRC 07.

3. By the impugned order, the respondent has confirmed the amount proposed to be demanded from the petitioner in the notice that preceded the aforesaid order.

4. The amounts that have been confirmed against the petitioner vide impugned order are as under:

(Amount in Rs.)

S.No	Tax rate (%)	Act	Tax/Cess	Interest	Penalty	Fee	Others	Total
1.	9	SGST	442,647.00	0.00	44,264.70	0.00	0.00	4,86,911.70
2.	9	CGST	442,647.00	0.00	44,264.70	0.00	0.00	4,86,911.70
3.	0	SGST	2,556.00	0.00	255.60	0.00	0.00	2811.60
4.	0	CGST	2,256.00	0.00	225.60	0.00	0.00	2481.60

5. The learned counsel for the petitioner submits that the petitioner is a small time operator and was unaware of the notices that preceded the impugned

order.

6. It is submitted that the petitioner became aware of the impugned order and the notices, which were posted in the GST common portal, only after the Bank account was attached on 13.02.2024 and the amounts of Rs.1,03,156/- and Rs.3,321/- were recovered on 06.03.2024 and 19.03.2024, respectively.

7. It is submitted that since the petitioner has a fair case, the petitioner may be given one opportunity to explain the case.

8. The learned Additional Government Pleader for the respondent, on the other hand, submits that this Writ Petition is devoid of merits and liable to be dismissed, on account of latches, as the impugned order is issued on 28.07.2022.

9. It is further submitted that there is no scope of interest 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.***

10. It is further submitted that there is no scope for permitting the petitioner to file statutory appeal as the limitation has expired under Section 107 of the respective GST enactments in the light of decision of 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.*** Hence, this Writ Petition is liable to be dismissed.

11. Having considered the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and considering the fact that the amounts have been recovered on 06.03.2024 and 19.03.2024, pursuant to the attachment made on 13.02.2024, this Court is inclined to grant partial relief to the petitioner as the discretion is exercised in favour of the petitioner. Hence, the impugned order is quashed and the case is remitted back to the respondent to pass fresh orders.

9. The impugned order, which stands quashed, shall be treated as addendum to the show cause notices that preceded the impugned order.

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

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

Index : Yes / No
Internet : Yes / No
apd

28.06.2024

To

The State Tax Officer (Main),
Tuticorin-II,
Tuticorin.

C.SARAVANAN, J.

apd

W.P.(MD) No.14096 of 2024

28.06.2024