BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.13753 & 13754 of 2024
and
W.M.P.(MD)Nos.12096 to 12099 of 2024

In W.P.(MD)No.13753 of 2024:
Tvl.Venus Textiles,
Represented by its Partner K.Manivel. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
O/o.the Commercial Tax Officer,
Karur-4 Assessment Circle,
Karur, Erode. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the assessment year 2018-19 in GSTIN:33AAMFV5688F2ZN/2018-19 dated 18.12.2023 and the consequential DRC-07 order bearing Ref No.ZD331223135676I dated 19.12.2023 and quash the same.

For petitioner : Mr.S.Rajasekar
For respondent : Mr.J.K.Jayaselan
Government Advocate

In W.P.(MD)No.13754 of 2024:
Tvl.Venus Textiles,
Represented by its Partner K.Manivel. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
O/o.the Commercial Tax Officer,
Karur-4 Assessment Circle,
Karur, Erode. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings of the respondent order for the assessment year 2019-20 in GSTIN:33AAMFV5688F2ZN/2019-20 dated 06.02.2024 and the consequential DRC-07 order bearing Ref No.ZD3302240320262 dated 06.02.2024 and quash the same.

For petitioner : Mr.S.Rajasekar
For respondent : Mr.J.K.Jayaselan
Government Advocate

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COMMON ORDER

By this common order, both the Writ Petitions are disposed of after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The learned counsel for the petitioner submits that the petitioner's GST registration was cancelled on 08.11.2019 with effect from 20.08.2017 pursuant to the show cause notice issued to the petitioner in Form GST REG 17 under Rule 22(1) of TNGST Act, 2017, on 06.12.2018.

3. It is submitted that the reason for cancelling the registration was that the petitioner had not filed any Return for a period in dispute which is covered by the Writ Petition in W.P.(MD)No.13753 of 2024.

4. It is further submitted by the learned counsel for the petitioner that the petitioner has also not renewed the registration, after it was cancelled on 08.01.2019.

5. It is further submitted that the impugned orders, which relies on GSTR-3B purportedly filed by the petitioner for the respective assessment years and GSTR 2A, auto populated inputs in GSTR 2A against the petitioner's GSTIN, are technically impossible, as the the petitioner's GST registration was cancelled on 08.01.2019 with effect from 20.08.2017 pursuant to the show cause notice issued

to the petitioner in Form GST REG 17 under Rule 22(1) of TNGST Act, 2017, on 06.12.2018.

6. It is submitted that the petitioner has not filed any return either in GST DRC 01 or GSTR-3B for the respective assessment years. Without taking into account the same, the Department has come to the conclusion that there were inward supply of goods by third party suppliers and has applied Rule 30 of the GST Rules and has confirmed the tax by adding 110% to the inward value of supply in the auto populated ITC in GSTR-2A.

7. It is submitted that there is a clear non application of mind in the respective impugned orders. However, the petitioner fairly submits that the petitioner has neither replied to the show cause notice nor appeared for personal hearing as the petitioner's registration was cancelled as early as 08.01.2019 with effect from 20.08.2017. Hence, prays that the impugned orders be quashed.

8. The learned counsel for the petitioner further submits that the petitioner may be given one opportunity to explain the position as admittedly, the petitioner

has not also participated in the personal hearing by filing replies to the show cause notices that preceded the impugned orders.

9. The learned Government Advocate for the respondent, on the other hand, submits that both the Writ Petitions are time barred and liable to be dismissed 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 submitted that even otherwise the period for filing statutory appeal in W.P.(MD)No.13753 of 2024 was also time barred in terms of limitation under Section 107 of the TNGST Act, 2017, 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 submits that no mercy has been given to the petitioner as the petitioner has kept over the rights.

11. Having considered submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, this Court is

of the view that the petitioner has made out the case for interference with the impugned orders as there is a contradiction. Since the petitioner's registration was cancelled on 08.01.2019, the question of the petitioner filing the Return in GST DRC 3B cannot be countenanced.

12. It appears that since the petitioner has neither also replied to the show cause notices nor participated in the personal hearings. This Court is, therefore, of the view that the matter deserves to be remitted back to the respondent to pass fresh orders on merits. Considering the fact that the petitioner may have had outward supply of goods during the period in dispute, as a condition for hearing the case afresh, the petitioner shall deposit 10% of the disputed tax under the respective Writ Petitions in cash or through Electronic Cash Register, if the same is accessible.

13. The impugned orders, which stand quashed shall be treated as addendum to the respective show cause notices that preceded the impugned orders. It is expected that the petitioner shall deposit the aforesaid amount along with the reply to the show cause notices within 30 days from the date of receipt

of a copy of this order.

14. It is expected that the respondent shall pass fair orders on merits and in accordance with law as expeditiously as possible preferably within a period of two months thereafter. Needless to state, the petitioner shall also be heard before passing the order in the demand proceedings.

These Writ Petitions are disposed of, with above directions. No costs. Consequently, connected miscellaneous petitions are closed.

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

To

The Deputy State Tax Officer-1,
O/o.the Commercial Tax Officer,
Karur-4 Assessment Circle,
Karur, Erode.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.13753 & 13754 of 2024

27.06.2024