BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14385 of 2024
and
W.M.P(MD).No.12615 of 2024

M.Nithaiahnantham ... Petitioner

Vs.

1.The Deputy Commissioner (GST-Appeal) (State Tax),
Madurai & Tirunelveli,
C.T.Buildings,
A.R.Line Road, Palayamkottai,
Tirunelveli – 627 002.

2.The Assistant Commissioner (ST)-II,
O/o the Assistant Commissioner (ST)-II,
Virudhunagar. ... 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 of rejection of the appeal passed by the 1st respondent dated 10.05.2024 and quash the same and with a further direction directing the 1st respondent to take the appeal dated 15.03.2024 filed by the petitioner on file.

For petitioner : Mrs.Lakshmi Gopinathan
for M/s.Polax Legal Solutions
For respondents : 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 respondents.

2. The petitioner is before this Court against the impugned order in Form GST APL 02 dated 10.05.2024, whereby, an appeal filed by the petitioner on 15.03.2024 against the demand notice, dated 19.10.2023 for the assessment year 2021-22, has been rejected on the ground of limitation.

3. The learned counsel for the petitioner submits that there was an error in paying the tax. It is submitted that instead of paying the amount in Bill to Customer, it has been paid in Business to Business category and thus, the petitioner has been mulcted with the tax liability. It is, further, submitted that the petitioner has a fair answer to succeed in the appeal before the first respondent.

Hence, a direction may be issued to the Deputy Commissioner (GST Appeal) (ST)/first respondent to dispose of the appeal on merits without reference to the limitation.

4. The learned Additional Government Pleader for the respondents, on the other hand, submits that this Writ Petition is liable to be dismissed in the light of the decision rendered 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.***

5. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, considering the fact that the petitioner is still a going concerned engaged in business, this Court is inclined to set aside the impugned order rejecting the petitioner's appeal *in limine* by directing the first respondent to dispose of the appeal on merits and in accordance with law.

6. The petitioner shall, however, deposit 10% of the disputed tax, as is

contemplated under Section 107 of the respective GST enactments, through its Electronic Cash Register, within 30 days from the date of receipt of a copy of this order. Subject to such deposit, the first respondent shall take up the appeal and dispose of the same on merits and in accordance with law as expeditiously as possible preferably three months from today.

This Writ Petition stands disposed of, with above directions. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes / No
apd

02.07.2024

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C.SARAVANAN, J.

apd

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