BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.14434 & 14435 of 2024
and
W.M.P.(MD)Nos.12655, 12656, 12706 & 12707 of 2024

W.P.(MD)No.14434 of 2024:

M/s.Geetha Store,
Represented by its Proprietor Ramakrishnan ... Petitioner

Vs.

The Deputy State Tax Officer-II,
Virudhunagar -3 Assessment Circle,
Virudhunagar. ... 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 vide his order in GSTIN: 33BNLPR4644G1ZS/2017-18, dated 26.10.2023 and quash the same as it is illegal and passed in gross violation of principles of natural justice and further direct the respondent to redo the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act, 2017.

For petitioner : Mr.A.Satheesh Murugan
For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

W.P.(MD)No.14435 of 2024:

M/s.Geetha Store,
Represented by its Proprietor Ramakrishnan ... Petitioner

Vs.

The Deputy State Tax Officer-II,
Virudhunagar -3 Assessment Circle,
Virudhunagar. ... 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 vide his order in GSTIN: 33BNLPR4644G1ZS/2018-19, dated 26.10.2023 and quash the same as it is illegal and passed in gross violation of principles of natural justice and further direct the respondent to redo the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act, 2017.

For petitioner : Mr.A.Satheesh Murugan
For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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COMMON ORDER

By this common order, both the Writ Petitions are taken up for disposal.

2. In these Writ Petitions, the petitioner has challenged the impugned assessment orders dated 26.10.2023 passed by the respondent for the assessment

years 2017-18 and 2018-19.

3. It is noticed that the petitioner's GST registration was cancelled by the respondent on 21.04.2022 with effect from the same date, after the show cause notice issued on 16.03.2022.

4. It is the further case of the petitioner that the petitioner is a small time dealer, running a grocery store and not well-versed to the procedure for filing Returns and receiving notice through GST portal.

5. It is submitted that only after the Department had telephonically informed to the petitioner that the petitioner was in arrears of tax for the respective assessment years and the petitioner's registration was also cancelled.

6. It is submitted that the petitioner has downloaded the same with the help of the counsel and has now filed this Writ Petition.

7. It is submitted that the petitioner's turn over is well below the taxable

turn over in terms of Section 22 of the respective GST enactments. Hence, one opportunity may be given to respond to the notices that preceded the impugned orders and also for revoking the registration, that was cancelled on 21.04.2022.

8. It appears that the petitioner has not filed the Return and further, there are no details to substantiate that the petitioner's turn over is below threshold limit under Section 22 of the respective GST enactments.

9. The above submissions are opposed by the learned Additional Government Pleader for the respondent, on the ground that these 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.***

10. 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.

11. Further, the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent has confirmed that the issue is now covered by the decision rendered by this Court in ***Tvl.Suguna Cutpiece Center Vs. Appellate Deputy Commissioner (ST) (GST) and others, in W.P.Nos. 25048, 25877, 12738 of 2021 and etc., batch (decided on 31.01.2022).***

12. Having considered the same, the impugned order is set aside and the matter is remitted back to the respondent to pass fresh orders on merits and in accordance with law subject to the petitioner depositing 10% of the disputed tax through its Electronic Cash Register to the credit of the respondent and additionally the petitioner shall also comply with the requirements of the order passed by this Court in ***Tvl.Suguna Cutpiece Center'***s case (cited supra).

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

14. 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 together with the above deposit. The respondent shall, thereafter, pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of two months, subject to the above deposit. Needless to state, the petitioner shall be heard before passing the order.

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

Index : Yes / No **03.07.2024**
Internet : Yes / No
apd

To
The Deputy State Tax Officer-II,
Virudhunagar -3 Assessment Circle,
Virudhunagar.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.14434 & 14435 of 2024

03.07.2024