BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.14390 and 14391 of 2024
and
W.M.P(MD)Nos.12622 to 12625 of 2024

WP(MD)No.14390 of 2024:

Tvl.Saravana Traders,
Rep. by its Proprietor S.Raj Mohan,
No.9, North Agraharam, Valangaiman,
Thiruvarur District - 612 804. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Thanjavur District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order passed by the Respondent vide his order in GSTIN - 33AGCPR6167R1ZO/2017-2018 dated 11-05-2023 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.RD.Ganesan

For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

WP(MD)No.14391 of 2024:

Tvl.Saravana Traders,
Rep. by its Proprietor Mr.S.Raj Mohan,
No.9, North Agraharam, Valangaiman,
Thiruvarur District - 612 804. ... Petitioner

Vs.

The State Tax Officer,
Papanasam Assessment Circle,
Thanjavur District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorarified mandamus, calling for records pertaining to the impugned order passed by the Respondent vide his order in GSTIN - 33AGCPR6167R1ZO/2021-2022 dated 28.04.2023 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.RD.Ganesan

For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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COMMON ORDER

These Writ Petitions are disposed of at the time of admission.

2. The case of the petitioner is that since the petitioner has failed to note the notices that preceded the impugned order issued to the petitioner, the petitioner failed to file reply to the same.

3. It is submitted that the petitioner has failed to notice the impugned orders were passed on 11.05.2023 in W.P(MD)No. 14390 of 2024 and on 28.04.2023 in W.P.(MD)No.14391 of 2024.

4. It is noticed that as far as the Writ Petition in W.P.(MD)No.14390 of 2024 is concerned, the demand confirmed on the petitioner is Rs.14,46,587/-, out of which, Rs.1,92,429/- recovered during the month of May 2024. As far as W.P.(MD)No.14391 of 2024 is concerned, the tax amount is Rs.1,30,288.06/- and no amount has been paid.

5. The learned counsel for the petitioner submits that the petitioner is willing to deposit 10% of the disputed tax in W.P.(MD)No.14391 of 2024 and that the amount of Rs.1,92,429/- recovered from the petitioner in W.P.(MD)No.14390 of 2024.

6. The above submission is 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.***

7. 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.

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, the Court is of the view that the issue involved on merits. Further, considering the fact that they are on going concern and carrying on business, the Court is of the view that the petitioner can be given liberty to participate in the proceedings afresh subject to the petitioner depositing 10% of the disputed tax in W.P.(MD)No.14391 of 2024 from its Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order. Subject to above compliance, the impugned orders in both Writ Petitions are set aside and remitted the cases back to the respondent to pass fresh orders.

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

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 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. Needless to state, the petitioner shall be heard before passing the orders.

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

Index : Yes / No
Internet : Yes / No
apd

03.07.2024

To

The State Tax Officer,
Papanasam Assessment Circle,
Thanjavur District.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.14390 and 14391 of 2024

03.07.2024