BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14012 of 2024
and
W.M.P.(MD) No.12282 of 2024

M/s.KPD Contractors,
Represented by its Managing Partner Palanisamy. ... Petitioner

Vs.

1.The Joint Commissioner of GST & Central Excise,
O/o. the Commissioner of GST & Central Excise,
No.1, Williams Road, Contonment,
Tiruchirapalli – 620 001.

2.The Additional Director,
Directorate General of GST Intelligence,
No.155-1, Lakshmanan Street,
Ukkadam, Coimbatore – 641 001.

3.The Deputy Director,
Directorate General of GST Intelligence,
Trichy Regional Unit, 3rd & 4th Floor,
No.47-47A, Heber Road, Beema Nagar,
Trichy – 620 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the impugned Order in Original bearing OIO No.14/2023-GST dated 29.09.2023 for the year 2017-18 to 2020-21 issued by the 1st respondent and quash the same.

For petitioner : Mr.Durairaj Sethuraman
For respondents : Mr.N.Dilip Kumar
Senior Standing Counsel

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ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and learned Senior Standing Counsel for the respondents.

2. The petitioner was issued with notices in GST DRC 01A and GST DRC 01. However, the petitioner failed to reply to the notices issued to the petitioner.

3. Earlier, in the personal hearing, which was fixed at 23.05.2023, the petitioner has not appeared. In the second personal hearing, which was held on 14.06.2023, the petitioner has appeared through his Advocate *viz.,* D.Udhayasankar.

4. The impugned order records the personal hearing as detailed below:

> Personal Hearing in this case was held on 14.06.2023. Shri. D. Udhayasanker, Advocate and the Authorized Representative on behalf of the notice appeared for the personal hearing. He stated that, at the time of investigation by DGGI, the taxpayer has paid an amount of Rs. 70,00,000/- (CGST-35,00,000 + SGST-35,00,000) under Form GST DRC-03 dated 16.12.2023, however, the said payment was missed out and not considered by the DGGI while issuing the SCN dated 18.01.2023 and hence, they kindly requested the Adjudicating Authority to appropriate the same while deciding the case. Regarding migration issue and online registration in GSTIN server due to which the taxpayer was forced to take 5 GST registration, he would submit the relevant documents shortly to justify the actual facts. Apart from the above, they proposed the file the GSTR-9 shortly under the extended time limit and hence, they requested the adjudicating authority to decide the case after payment of the same. Moreover, they submitted that the taxpayer is genuine assessee and the non-payment GST is due to the online system/server problems as mentioned above and hence, they requested to decide the case without imposing any fine and penalty and they will submit the relevant documents in this connection shortly. However, no such reply to the Show Cause Notice and the supporting documents are submitted by the taxpayer or his authorized representative till date i.e. two months after completion of Personal Hearing.
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> In the present case, the Noticee did not file his reply to the Show Cause Notice. However, in line with the principal of natural justice, personal hearing was extended to the Noticee, for which the Noticee did not furnished any reply or documents. As no cause has been shown by the Noticee for non-filing of his reply to the Show Cause Notice since expiry of two months after completion of personal hearing and the noticee neither replied to the show cause notice nor sought for any postponement to submit the reply, it is decided to complete the case based on the documents available on record.

5. The learned counsel for the petitioner submits that since the petitioner, who is a semi-literate person, is a road contractor in various municipalities, the petitioner failed to discharge the tax liability. It is submitted that the exaggerated demands have been confirmed.

6. It is further submitted that the petitioner was also not allowed to give any document to substantiate its case and therefore, there is a manifest violation of the principles of natural justice. The learned counsel for the petitioner submits that one opportunity may be granted to the petitioner.

7. The learned Senior Standing Counsel for the respondents, on the other hand, would refer the letter dated 23.01.2023, wherein, the petitioner has clearly acknowledged the receipt of the show cause notice together with the annexure of documents mentioned therein. Therefore, it is submitted that no mercy has to be shown to the petitioner and this Writ Petition is 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.***

8. It is further submitted that even otherwise the petitioner cannot file statutory appeal 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*** and has pressed for

dismissal of this Writ Petition.

9. Having considered the submissions made by the petitioner and Senior Standing Counsel for the respondents and considering the fact that a sum of Rs.2,61,87,750/- (Rs.1,91,87,750/- + Rs.70,00,000/-) has been paid by the petitioner through Electronic Credit Ledger, out of the total amount of Rs.4,44,30,586/-, although it was wrongly mentioned as Electronic Cash Register, the Court is inclined to exercise the discretion partly in favour of the petitioner by quashing the impugned order and remitting the case back to the respondents to pass fresh orders on merits and in accordance with law.

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

11. The petitioner shall file reply to the notices that preceded the impugned order within 30 days from the date of receipt of a copy of this order, manually and also on the web portal. Since the petitioner has paid the said amounts only from the Electronic Credit Ledger, the petitioner shall pay another 10% of the balance

disputed tax from its Electronic Cash Register.

12. The first respondent shall pass fresh orders on merits and in accordance with law as expeditiously as possible preferably within three months thereafter. The petitioner is directed to co-operate with the respondents, failing which, the first respondent is at liberty to initiate appropriate proceedings against the petitioner based on the available materials on record.

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

01.07.2024

Index : Yes / No
Internet : Yes / No
apd

C.SARAVANAN, J.

apd

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