BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.14548 of 2024
and
W.M.P(MD)No.12769 of 2024

S.Anand Sathya ... Petitioner

Vs.

1.The Superintendent of CGST and Central Excise,
Office of the Superintendent of Goods and Service
Tax & Central Excise,
Marthandam Range,
48/1-4, First Floor,
Sivaraj Building, Tower Junction,
Nagercoil-629 001.

2.The Assistant Commissioner of Central GST and Excise,
Kuzhirhurai Circle,
Commercial Taxes Building,
South High Ground Road,
Palayamkottai, Tirunelveli.

3.The Additional Commissioner of Central GST & Excise,
Tirunelveli Sub-Commissionerate, Tirunelveli,
The Assistant Commissioner of Central GST & Excise,
Tirunelveli Division, Tirunelveli. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to impugned order in DIN-20240359XO000031177, dated 22.03.2024 on the file of the 1st respondent and the consequent impugned demand order in ZD330424205527N, dated 26.04.2024 on the file of 1st respondent and the impugned demand order in ZD3305240001808, dated 01.05.2024 on the file of 2nd respondent and quash the above orders.

For Petitioner : Mr.I.Romeo Roy Alfred

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

In this case, the petitioner has challenged the impugned order, dated 22.03.2024 and the consequential demand order, dated 26.04.2024 and 01.05.2024.

2. The case of the petitioner is that the impugned order has been passed in respect of the demand due and payable by the petitioner's father in the business that was carried out by the petitioner's father who died on 08.02.2023. It is further submitted that even the ASMT-10 notice, dated 09.03.2023 is after the death of the petitioner's father.

3. The learned counsel for the petitioner would submit that the petitioner has not taken over the business of the petitioner's father (Late) Mr.Sathianesan and therefore, the impugned order is liable to be quashed.

4. It is noticed that as a legal representative, the petitioner may be liable to be taxed in terms of Section 93 of the CGST Act, 2017. A similar writ petition was also filed by this petitioner in W.P(MD)No.11646 of 2024 for the assessment year 2017-18 and an order came to be passed on 05.06.2024. The said writ petition was disposed of on the following terms:

"6. Having considered the submissions of the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent, the Court is of the view that this is a fit case for quashing the impugned order and remitting back the case to the respondent to pass fresh orders on merits and in accordance with law as admittedly the demand pertains to July 2017 to March 2018 and the impugned order has been passed after the death of the petitioner's father. Since the petitioner may be liable to be taxed as legal representative/heir of his father in terms of under Section 93 of the respective GST enactments, the Court is of the view that the petitioner should be given a proper opportunity to defend the tax liability.

7. Under these circumstances, the impugned order is quashed and the matter is remitted back to the respondent to pass fresh orders on merits and in accordance with law.

8. The respondent is directed to serve a copy of the notice that preceded the impugned order dated 04.05.2023 to the petitioner within a period of 30 days from the date of receipt of a copy of this order. The impugned order, which stands quashed, shall be treated

> *as addendum to the show cause notice to be furnished which formed the basis of the impugned order.*
>
> *9. It is expected that the petitioner will reply the show cause notice within a period of two months from the date of receipt of the show cause notice. The respondent shall, thereafter, endeavour to pass a fresh orders on merits and in accordance with law as expeditiously as possible preferably within a period of three months thereafter. Needless to state, the petitioner shall be heard. The petitioner shall co-operate with the respondent."*

Since already under similar circumstances for the aforesaid assessment year, order has been set aside, I see no reason to take a different view.

5. Therefore, this writ petition is allowed in terms of the above decision. No costs. Consequently, connected Miscellaneous Petition is closed.

04.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes

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To

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The Assistant Commissioner of Central GST & Excise,
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C.SARAVANAN, J.

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