BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.15562 & 15563 of 2024
and
W.M.P.(MD)Nos.13609, 13611, 13626 & 13627 of 2024

In W.P.(MD)No.15562 of 2024:

Tvl.Simla Traders,
Represented by its Proprietrix Kavitha. ... Petitioner

Vs.

The State Tax Officer,
Roving Squad,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned order passed by the respondent vide his order in GSTIN:33CGYPK7346B1Z5/2017-18 dated 12.12.2023 and quash the same as it is illegal, without jurisdiction and 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.

For petitioner : Mr.A.Satheesh Murugan

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

In W.P.(MD)No.15563 of 2024:

Tvl.Simla Traders,
Represented by its Proprietrix Kavitha. ... Petitioner

Vs.

The State Tax Officer,
Roving Squad,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned order passed by the respondent vide his order in GSTIN:33CGYPK7346B1Z5/2018-19 dated 12.12.2023 and quash the same as it is illegal, without jurisdiction and 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.

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. Heard learned counsel for the petitioner and learned Additional Government Pleader for the respondent.

3. The petitioner is before this Court against the respective impugned orders passed by the respondent dated 12.12.2023 passed for the respective assessment years namely, 2017-18 and 2018-19. The demand has been confirmed on the petitioner for the respective assessment years based on the data retrieved by the Department from the profit and loss account and the balance sheet of the petitioner.

4. It is the case of the petitioner that the impugned order that was passed on the petitioner is totally incorrect.

5. It is further submitted that the petitioner has, however, failed to reply

the notices that preceded the respective impugned orders and thus, did not file statutory appeal in time.

6. In this connection, the learned counsel for the petitioner would submit that the respondent has recovered the following amounts as against the total tax liability of Rs.27,00,468/-:

S.No	W.P. (MD)Nos.	Assessment year	Tax liability Rs.	Interest Rs.	Penalty Rs.	Recovery made Rs.
1.	15562/2024	2017-18	71,702	72,874	40,000	1,41,906
2.	15563/2024	2018-19	26,28,766	22,20,574	3,04,022	7,44,980
	Total		27,00,468			8,86,886

7. It is submitted that the petitioner may given an opportunity to give a reply to substantiate the same.

8. Further, it is submitted that the petitioner is willing to comply with the reasonable conditions that the Court may impose.

9. On the other hand, the learned Additional Government Pleader for the

respondent in both Writ Petitions would submit 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. Having considered the arguments advanced by the learned counsel for the petitioner in both Writ Petitions and the learned Additional Government Pleader for the respondent in both Writ Petitions, the Court is inclined to come to partially rescue the petitioner by quashing the impugned orders and remitting the cases back to the respondent to pass fresh orders on merits and in accordance with law, subject to the petitioner depositing 25% of the balance disputed tax i.e.,

Rs.18,13,582/- (Rs.27,00,468/- - Rs.8,86,886/-) to the credit of the respondent from its Electronic Cash Register within a period of 30 days from the date of receipt of this order.

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

13. It is expected that the petitioner shall file reply to the respective show cause notices that preceded the respective impugned orders 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 the final orders are passed.

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

15.07.2024

Index : Yes / No
Internet : Yes / No
apd

To
The State Tax Officer,
Roving Squad,
Madurai.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.15562 & 15563 of 2024

15.07.2024