BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.14758 of 2024
and
W.M.P.(MD)Nos.12955 & 12956 of 2024

M/s.Royal Communications,
Represented by its Proprietor Ahamed Rafeek. ... Petitioner

Vs.

1.The Superintendent of Central GST & Central Excise,
Sivakasi-1 Range,
Sivakasi,
Virudhunagar.

2.The Commissioner of Central Excise (Appeals),
O/o the Commissioner of Central Excise,
Central Revenue Buildings,
V.P.Rathinasamy Road,
Bibikulam, Madurai. ... Respondents

(R2 is *suo motu* impleaded *vide* order dated 04.07.2024
in W.P.(MD)No.14758 of 2024)

<u>PRAYER:</u> 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 in his order in original No.

26/SUPDT/CGST/2023/SVK 1 Range dated 28.02.2023 and quash the same as it is illegal and 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.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 the learned Senior Standing Counsel for the respondents.

2. In this Writ Petition, the petitioner has prayed to quash the impugned assessment order dated 28.02.2023 passed by the first respondent for the assessment year 2017-18 in Order-in-Original No.26/SUPDT/CGST/2023/SVK 1 RANGE.

3. It is noticed that this Writ Petition has been filed long after the expiry of the limitation for filing of appeal before the Appellate Authority/Commissioner of

Central Excise (Appeals), Madurai, under Section 107 of the respective GST enactments.

4. This Writ Petition is opposed by the learned Senior Standing Counsel for the respondents, on the ground that the Writ Petition is 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.***

5. 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 this Writ Petition is liable to be dismissed.

6. Having considered the submissions made by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents, this Court

is of the view that the petitioner may have a case to substantiate the issue before the Commissioner of Central Excise (Appeals), Madurai. Therefore, the discretion is exercised partly in favour of the petitioner by giving an opportunity to file statutory appeal before the Appellate Authority *viz.*, the Commissioner of Central Excise (Appeals), Madurai, who is *suo motu* impleaded as the second respondent.

7. The petitioner shall file Appeal before the second respondent within 30 days from the date of receipt of a copy of this order together with pre-deposit of 25% of the disputed tax from its Electronic Cash Register to the credit of the second respondent. Subject to such compliance, the Appeal shall be entertained and disposed of on merits and in accordance with law without reference to the limitation.

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

Index : Yes / No
Internet : Yes / No
apd

04.07.2024

C.SARAVANAN, J.

apd

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