BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.15648 to 15650 of 2024
and
W.M.P.(MD)Nos.13661, 13659 & 13650 of 2024

In W.P.(MD)No.15648 of 2024:

Tvl.A.Saravanan
Represented by its Proprietor A.Saravanan ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Tuticorin-II Assessment Circle,
Station:No.282-A, North Beach Road,
Tuticorin – 628 001. ... 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 assessment order on the file of the respondent vide GSTIN:33CNZPS8685M2ZH/2018-19 dated 11.09.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2018-19.

For petitioner : Mr.Raja.Karthikeyan

For respondent : Mr.J.K.Jayaselan
Government Advocate

In W.P.(MD)No.15649 of 2024:

Tvl.A.Saravanan
Represented by its Proprietor A.Saravanan ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Tuticorin-II Assessment Circle,
Station:No.282-A, North Beach Road,
Tuticorin – 628 001. ... 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 assessment order on the file of the respondent vide GSTIN:33CNZPS8685M2ZH/2019-20 dated 11.09.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2019-20.

For petitioner : Mr.Raja.Karthikeyan

For respondent : Mr.J.K.Jayaselan
Government Advocate

In W.P.(MD)No.15650 of 2024:

Tvl.A.Saravanan
Represented by its Proprietor A.Saravanan ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Tuticorin-II Assessment Circle,
Station:No.282-A, North Beach Road,
Tuticorin – 628 001. ... 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 assessment order on the file of the respondent vide GSTIN:33CNZPS8685M2ZH/2020-21 dated 24.08.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2020-21.

For petitioner : Mr.Raja.Karthikeyan

For respondent : Mr.J.K.Jayaselan
Government Advocate

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COMMON ORDER

By this common order, all the three Writ Petitions are taken up for disposal.

2. Heard learned counsel for the petitioner in all Writ Petitions and learned Government Advocate for the respondent in all Writ Petitions.

3. In these Writ Petitions, the petitioner has challenged the respective assessment orders passed against the petitioner based on the difference in the Return filed by the petitioner in GSTR 1 and GSTR 3B.

4. The learned counsel for the petitioner in all Writ Petitions submits that the petitioner has been assessed contrary to the provisions of the respective GST enactments and therefore, liable to pay tax of 18% instead of 5%. Since the respondent imposed 18% of the GST on the petitioner, the petitioner has been mulcted with tax liability of Rs.32,57,972/- (Rs.13,44,828/- + Rs.14,91,344/- + Rs.4,21,800/-) for the assessment years namely, 2018-19 to 2020-21.

5. It is submitted that a part of the demand also pertains to the transportation charges. It is submitted that the petitioner has own transport and therefore, no service was availed by the petitioner from the third party. Hence, the question of demand of the tax regarding transportation charges did not arise.

6. The learned counsel for the petitioner in these Writ Petitions submits that the petitioner is willing to comply with the reasonable condition that may be

imposed by the Court in order to the petitioner may be given one opportunity to defend the case after the impugned orders are set aside.

7. The learned counsel for the petitioner in all Writ Petitions further submits that no useful purpose is served, even if the petitioner is relegated to file its reply at this distance point of time. It is submitted that the original records will have to be perused by the assessing officer. Hence, prays to allow this Writ Petition.

8. On the other hand, the learned Government Advocate for the respondent in all 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.***

9. 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.

10. Having considered the learned counsel for the petitioner in all Writ Petitions and learned Government Advocate for the respondent in all Writ Petitions, the Court is inclined to come to the rescue of 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 30% of the disputed tax to the credit of the respondent from its Electronic Cash Register from the date of receipt of a copy of this order.

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

12. 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.

Index : Yes / No **15.07.2024**
Internet : Yes / No
apd

To
The Deputy State Tax Officer-1,
Tuticorin-II Assessment Circle,
Station:No.282-A, North Beach Road,
Tuticorin – 628 001.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.15648 to 15650 of 2024

15.07.2024