BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.16216 to 16218 of 2024
and
W.M.P.(MD)Nos.14093, 14097 & 14091 of 2024

W.P.(MD)No.16216 of 2024:
Tvl.Ganapathi Enterprises,
Represented by its Proprietor G.Balasubramani. ... Petitioner

Vs.

The State Tax Officer,
O/o. the Assistant Commissioner(ST),
Tuticorin -II Circle,
Tuticorin. ... 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:33ARZPB6260B1ZX/2017-18 dated 07.09.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

For petitioner	: Mr.Raja.Karthikeyan
For respondent	: Mr.R.Suresh Kumar Additional Government Pleader

W.P.(MD)No.16217 of 2024:
Tvl.Ganapathi Enterprises,
Represented by its Proprietor G.Balasubramani. ... Petitioner

Vs.

The State Tax Officer,
O/o. the Assistant Commissioner(ST),
Tuticorin -II Circle,
Tuticorin. ... 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:33ARZPB6260B1ZX/2019-20 dated 07.09.2023 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.R.Suresh Kumar
Additional Government Pleader

W.P.(MD)No.16218 of 2024:
Tvl.Ganapathi Enterprises,
Represented by its Proprietor G.Balasubramani. ... Petitioner

Vs.

The State Tax Officer,
O/o. the Assistant Commissioner(ST),
Tuticorin -II Circle,
Tuticorin. ... 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:33ARZPB6260B1ZX/2018-19 dated 07.09.2023 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.R.Suresh Kumar
Additional Government Pleader
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COMMON ORDER

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

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

3. In these Writ Petitions, the petitioner is before this Court challenging the impugned assessment orders dated 07.09.2023 passed by the respondent for the respective assessment years namely, 2017-18, 2018-19 and 2019-20.

4. The case of the petitioner is that the demand in these impugned orders is

based on the alleged variance between the data in GSTR 01 and GSTR 3B, GSTR 2A and GSTR 3B and alleged failure to tax on the reverse charge basis.

5. The learned counsel for the petitioner in these Writ Petitions submits that the petitioner was unaware of the notices that preceded the impugned orders and therefore, could not participate in the show cause proceedings, since they were posted in the GST common portal. Hence, prays to allow this Writ Petition.

6. The above submission is opposed by the learned Additional Government Pleader for the respondent, on the ground 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.***

7. 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.

8. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Court is of the view that the petitioner may have a case on merits and therefore, the discretion can be exercised partly in favour of the petitioner by quashing the impugned orders and remitting the cases back to the respondent, subject to the petitioner depositing 25% of disputed tax 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.

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

10. It is expected that the petitioner shall file a reply 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 three months. Needless to state, the petitioner shall be heard before passing the orders.

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

Index : Yes / No
Internet : Yes / No
apd

19.07.2024

To

The State Tax Officer,
O/o. the Assistant Commissioner(ST),
Tuticorin -II Circle,
Tuticorin.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.16216 to 16218 of 2024

19.07.2024