BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16444 of 2024
and
W.M.P.(MD)Nos.14247 & 14248 of 2024

Tvl.A.P.R.Explosives,
Represented by its Proprietor Sounder Raj. ... Petitioner

Vs.

The State Tax Officer,
Tirunelveli Town Assessment Circle,
Tirunelveli. ... Respondent

PRAYER: 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 vide his order in GSTIN: 33BPMPS9501J1ZH/2019-20 dated 31.01.2024 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.J.K.Jayaselan
Government Advocate

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ORDER

This Writ Petitions is disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the impugned order dated 31.01.2024 passed for the assessment year 2019.20. The impugned order precedes the notices in ASMT-10 dated 23.06.2022, GST DRC 01A dated 08.11.2022, GST DRC 01 dated 09.12.2022 and three personal hearing notices dated 05.01.2023, 10.03.2023 and 21.03.2023.

3. It is noticed that the petitioner has not participated in the show cause proceedings by filing reply to the notices that preceded the impugned order or the personal hearing notices that preceded the impugned order.

4. The explanation that is forthcoming from the petitioner is that the petitioner is a small time operator and was unaware of the impugned order that came to be passed in the GST common portal. For the same reason as it was

posted in the GST common portal, the petitioner also failed to note the notices that preceded the impugned order.

5. The above submission is opposed by the learned Government Advocate for the respondent, 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.***

6. 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.

7. Considering the fact that the petitioner may have an arguable case on merits, the Court is inclined to come to the rescue of the petitioner by setting aside the impugned order and remitting the case back to the respondent to pass a

fresh order on merits and in accordance with law, subject to the petitioner depositing 25% of the 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 a copy of this order.

8. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice that preceded the impugned order.

9. 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. The respondent shall thereafter pass a fresh order 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 order.

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

Index : Yes / No
Internet : Yes / No
apd

23.07.2024

To

The State Tax Officer,
Tirunelveli Town Assessment Circle,
Tirunelveli.

C.SARAVANAN, J.

apd

W.P.(MD) No.16444 of 2024

23.07.2024