BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **11.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15384 of 2024
and
W.M.P.(MD)No.13480 of 2024

Sterling Technotex Private Limited,
Represented by its Director Subramanian Raja. ... Petitioner

Vs.

The Deputy State Officer-2,
Rajapalayam -1 Assessment Circle,
Integrated Commercial Taxes Building,
Pudupalayam, Tenkasi Road,
Rajapalayam – 626 117. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the impugned order No.ZD331223127651U dated 18.12.2023 issued by the respondent an quash the same is wholly without jurisdiction and clear violation of statutory provisions.

For petitioner : Mr.S.Karunakar

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

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ORDER

Heard learned counsel for the petitioner and learned Government Advocate for the respondent.

2. The petitioner, is septuagenarian, aged about 71 years, is before this Court aggrieved by the impugned assessment order dated 18.12.2023 for the assessment period from July 2017 to March 2018 bearing reference No.ZD331223127651U.

3. By the impugned order, the respondent has confirmed the demand for the assessment year 2017-18.

4. The petitioner has neither responded the notices that preceded the impugned order nor the personal hearing notices that preceded the impugned order.

5. The case of the petitioner is that the petitioner's licence itself was cancelled on 25.02.2020 with effect from 18.02.2020 and that after the outbreak

of Covid-19 pandemic, the petitioner had gone abroad.

6. It is submitted that the petitioner was unaware of the proceedings, that was initiated against the petitioner.

7. It is submitted that only after the petitioner returned to India, the petitioner was surprised to note that the petitioner had suffered the impugned assessment order and the recovery notices were served to the petitioner for the period of 2017-18, 2018-19 and 2019-20.

8. The learned counsel for the petitioner further submits that one opportunity may be given to the petitioner to explain the case as the dispute for the assessment year 2017-18 arises on account of variance in the Input Tax Credit availed by the petitioner in Form GSTR 3B based on the tax paid invoices and the auto populated Return in GSTR 2A.

9. It is submitted that the petitioner also has the records to substantiate the case that the petitioner has validly availed the credit, on the strength of the

invoices raised on the petitioner for the supply made on the petitioner.

10. 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.***

11. 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.

12. Having considered the submissions made by the learned counsel for the petitione and learned Government Advocate for the respondent, the Court considering the fact that the petitioner’s registration was cancelled as early as on

18.02.2020, to balance the interest of the petitioner as well as revenue, the Court is inclined to partially come to the rescue of the petitioner by setting aside the impugned order and remitting the case back to the respondent to pass fresh orders on merits and in accordance with law.

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

14. The petitioner shall file a reply to the show cause notice that preceded the impugned order together with a pre-deposit of 25% of the disputed tax in cash or from its Electronic Cash Register, if the same is accessible within a period of 30 days from today. Respondent shall thereafter, pass a fresh order on merits and in accordance with law as early as possible preferably within a period of three months from today. Needless to state, the petitioner shall also be heard, before the final orders are passed.

15. Since the petitioner has possibility to flying back abroad again, the petitioner shall surrender his passport with the respondent, pending further orders.

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

11.07.2024

Index : Yes / No
Internet : Yes / No
apd

To
The Deputy State Officer-2,
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Rajapalayam – 626 117.

C.SARAVANAN, J.

apd

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