BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.15572 of 2024
and
W.M.P.(MD) No.13623 of 2024

Shanmugaraj Geetha ... Petitioner

/vs./

The Deputy State Tax Officer,
O/o. the Assistant Commissioner (State Taxes),
Aruppukottai Circle,
Aruppukottai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in Order Ref. No.ZD330623116901P dated 26/06/2023 issued by the Respondent and quash the same is wholly without jurisdiction and clear violation of statutory provisions.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Heard Mr.S.Karunakar, learned counsel for the petitioner and Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondent.

2.The petitioner is aggrieved by the impugned order dated 26.06.2023 passed by the respondent for the assessment year 2017-18.

3.The impugned order has preceded the notices in ASMT 10 dated 07.02.2022, DRC 01A dated 27.04.2022 and DRC 01 dated 15.02.2023. However, the petitioner failed to reply to the same and has thus suffered the impugned order dated 26.06.2023.

4.The case of the petitioner is that the impugned order as also the notices that preceded the impugned order went unnoticed, as the petitioner is a small time dealer engaged in supply of food articles, namely Dhall. It is submitted that the dispute has arisen on account of mismatch between the returns filed by the petitioner in GSTR 1 and GSTR 3B.

5.It is submitted that by mistake, the Accountant has included the value of sale of the exempted sale of Dhall exempted under Notification No.2/2017-CT dated 28.06.2017 into the taxable turn over in Form GSTR 3B, as a result of which the demand has been confirmed.

6.The learned counsel for the petitioner submits that there is no dispute that the petitioner had committed the mistake and that the impugned order has confirmed the demand, only because the petitioner did not participate in the show cause notice proceeding, which preceded the impugned order.

7.It is submitted that the petitioner may be given an opportunity to explain the same. It is submitted that the petitioner is willing to deposit any amount. The Court may impose any amount on the petitioner as condition for the case to be heard afresh *de nova*.

8.The learned Additional Government Pleader for the respondent would submit that the writ petition is devoid of merits and is liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in ***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 even the appeal at this stage will be time barred in terms of the limitation prescribed under Section 107 of the TNGST Act, 2017, in the light of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***.

10.Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, I am of the view that the petitioner deserves an opportunity to explain the case before the respondent, considering the fact that there appears to be an error in the entries made by the petitioner in GSTR 3B. The petitioner may have to explain the same with suitable documents.

11.Under these circumstances, the impugned order is set aside and the case is remitted 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 through its Electronic Cash Register.

12.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice in DRC 01 dated 15.02.2023. Needless to state that the petitioner shall be heard and the amount to be paid by the petitioner as condition for the case to be reheard shall be without prejudice to the rights of the petitioner on merits.

13.In case, the demand is dropped, the amount shall be returned or adjusted against the future tax liability of the petitioner. In case, the demand is confirmed, the amount shall be appropriated and the balance be recovered from the petitioner in the manner known to law. In case, the petitioner fails to deposit the amount within the aforesaid period, it will be construed as this writ petition was dismissed at the time of admission.

14.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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12.07.2024

To

The Deputy State Tax Officer,
O/o. the Assistant Commissioner (State Taxes),
Aruppukottai Circle,
Aruppukottai.

C.SARAVANAN, J.

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W.P.(MD) No.15572 of 2024

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