BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15666 of 2024
and
W.M.P(MD).No.13664 of 2024

Tvl.Southern Diesel Distributors,
Represented by its Partner M.Ramesh. ... Petitioner

Vs.

The State Tax Officer,
West Veli Street Circle,
Madurai. ... 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:33ACQFS5401F1Z8/2017-18 dated 26.12.2023 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

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ORDER

Heard learned counsel for the petitioner and learned Additional

Government Pleader for the respondent.

2. The petitioner is before this Court against the impugned order dated 26.12.2023 passed for the assessment year 2017-18 bearing reference in GSTIN: 33ACQFS5401F1Z8.

3. The impugned order has preceded the notices in Form ASMT-10 dated 03.08.2023, DRC 01A dated 15.09.2023 and two personal hearing notices dated 18.10.2023 and 18.12.2023. The petitioner has replied to the show cause notice on 13.12.2023, belatedly after issuance of the personal hearing notice dated 18.10.2023.

4. The case of the petitioner is that the petitioner is a small scale operator and the demand that has been confirmed in the impugned order arises on account of the discrepancies between the amount of the credit reflected in Form GSTR 2A, which is auto populated Input Tax Credit and the Returns filed by the petitioner in Form GSTR 3B.

5. The specific case of the petitioner is that the notices that preceded the impugned order were posted in the GST common portal and therefore, the petitioner could not respond to the notices in time.

6. It is submitted that the petitioner may be given one opportunity to respond the notices that preceded the impugned order, as the petitioner has adequate documentary evidence to substantiate the same.

7. It is submitted that the petitioner is willing to comply with the reasonable conditions that the Court may impose.

8. On the other hand, the learned Additional Government Pleader for the respondent would submit that this 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.***

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 this Writ Petition is liable to be dismissed.

10. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, the Court is of the view that the petitioner may have a case on merits and therefore, the discretion is exercised partly in favour 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, 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.

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

12. It is expected that the petitioner shall file a reply with the documentary evidence, 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 a fresh order 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.

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

Index : Yes / No
Internet : Yes / No
apd

15.07.2024

To

The State Tax Officer,
West Veli Street Circle,
Madurai.

C.SARAVANAN, J.

apd

W.P.(MD) No.15666 of 2024

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