BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.07.2024**

CORAM:

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

W.P.(MD) No.15542 of 2024
and
W.M.P.(MD) No.13602 of 2024

Tvl.Ganapathi Tradersh
rep. by Proprietor
Aravind Kumar ... Petitioner

/vs./

The State Tax Officer,
Tuticorin 1 Assessment Circle,
Thoothukudi. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN. 33BGZPA2686N1ZP/2019-20 dated 05.07.2023 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.J.K.Jeyaselan
Government Advocate

ORDER

Heard Mr.Raja.Karthikeyan, learned counsel for the petitioner and Mr.J.K.Jeyaselan, learned Government Advocate for the respondent.

2.The petitioner is aggrieved by the impugned order dated 05.07.2023 passed by the respondent for the assessment year 2019-20.

3.The impugned order precedes the notices in GST ASMT -10 dated 01.06.2022, GST DRC 01A dated 24.08.2022 and GST DRC 01 dated 10.02.2023. The impugned order also precedes three personal hearing notices, which the petitioner has not taken advantage and therefore, the respondent has passed the impugned order. The petitioner has also approached this Court after the expiry of limitation.

4.Although the writ petition is otherwise liable to be dismissed on account 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*** and the appeal will also be time barred in terms of the decision of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur*** reported in ***2008 (221) E.L.T. 163 (S.C)***, I am of the view that the dispute has arisen only on account of the discrepancy/mismatch between the input tax credit availed by the petitioner in Form GSTR 3B and GSTR 2A.

5.The petitioner may have a case on merits and therefore, I am inclined to come to rescue the petitioner by quashing the impugned order and by 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 from its Electronic Cash Register.

6.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued in DRC 01. The petitioner shall file a reply within the aforesaid period. The respondent shall thereafter pass a fresh order on merits and in accordance with law within a period of two months. Needless to state that the petitioner shall also be heard before final orders are passed.

7.With the above directions, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

12.07.2024

Index : Yes / No
Internet : Yes / No
mm

To

The State Tax Officer,
Tuticorin 1 Assessment Circle,
Thoothukudi.

C.SARAVANAN, J.

mm

W.P.(MD) No.15542 of 2024

12.07.2024