BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.15720 of 2024
and
W.M.P.(MD)Nos.13695 & 13696 of 2024

Tvl.Mani Nadar Sekar,
Represented by Proprietor M.Sekar. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tuticorin-III Assessment Circle,
Tuticorin. ... 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:33GBCPS6115P1Z7/2017-18 dated 28.06.2023 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 28.06.2023 passed under Section 73(9) of the TNGST Act, 2017 for the assessment year 2017-18 bearing reference in GSTIN: 33GBCPS6115P1Z7/2017-18.

3. The impugned order has preceded the notices in DRC 01A dated 20.04.2023, DRC 01 dated 26.05.2023 and personal hearing notices dated 24.04.2023, 31.05.2023, 07.06.2023 and 14.06.2023. However, the petitioner failed to reply the same stating that the petitioner was unaware of the same as the notices were posted on the GST common portal.

4. It is submitted that the petitioner was also unaware of the passing of the impugned order, as the same was posted in the GST common portal and not received by the petitioner physically.

5. It is submitted that the petitioner came to know about the impugned order only after the Department has initiated the recovery proceedings.

6. The learned counsel for the petitioner submits that the petitioner is not liable to pay the tax amount as detailed below:

Discrepancies Noticed	**Tax**		
Turnover difference	CGST	SGST	CESS
	245081.77	245081.77	1462180.00

7. It is submitted that the discrepancy is purely on account of the mismatch between the information in GSTR 1 and GSTR 3B. It is further submitted that the tax liability is arisen during the initial years of after the implementation of the GST with effect from 01.07.2017.

8. It is submitted that the petitioner will not in a position to explain the discrepancy and one opportunity may be given to the petitioner to explain the case.

9. 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.***

10. 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.

11. 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.

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

13. 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 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 petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

15.07.2024

To
The Assistant Commissioner (ST),
Tuticorin-III Assessment Circle,
Tuticorin.

C.SARAVANAN, J.

apd

W.P.(MD) No.15720 of 2024

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