BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16098 of 2024
and
W.M.P.(MD)Nos.13993 & 13995 of 2024

G.R.Pharma Distributors,
Represented by its Proprietrix Rajeswari. ... Petitioner

Vs.

1.The Deputy Commissioner
(GST Appeal)(State Tax),
Madurai and Tirunelveli,
Commercial Taxes Building,
Reserve Line, Palayamcottai,
Tirunelveli – 627 002.

2.The State Tax Officer (FAC),
Nagercoil-I Assessment,
Mead Street, Nagercoil – 629 001.

3.The Deputy Commissioner,
State Tax, Nagercoil,
Meads Street,
Nagercoil – 629 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the respondent in Form GST APL-02 in GSTIN:33AFQPR1816N1ZY, dated 10.05.2024, in rejecting the appeal filed by the petitioner against the order of the second respondent in GSTIN:33AFQPR1816N1Zy/2017-18 and demand in Reference No.ZD3312230192604, dated 04.12.2023 as time barred and quash the same and consequently, direct the first respondent to take the appeal on file on presentation of the hard copy of the appeal and dispose of the appeal on merits.

For petitioner : Mr.S.Karunakar

For respondents : 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 respondents.

2. The petitioner is before this Court against the impugned order passed by the second respondent dated 04.12.2023, bearing reference in GSTIN; 33AFQPR1816N1ZY/2017-18, against which, an appeal was filed by the petitioner. The same was rejected by the first respondent on 10.05.2024 as the appeal was filed beyond the condonable period of limitation of 37 days.

3. The case of the petitioner is that the petitioner was unaware of the

impugned assessment order dated 04.12.2023 and that only after coming to know that the impugned order had been posted in the GST common web portal on 05.04.2024, the petitioner took steps to file the appeal before the first respondent on 09.05.2024 with the delay of 37 days beyond the condonable period of limitation. Hence, prays to allow this Writ Petition.

4. The above submission is opposed by the learned Additional Government Pleader for the respondents, 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.***

5. 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.

6. It is noticed that the appeal has been rightly rejected by the first respondent as it is beyond the condonable period of limitation. At the same time, it is noticed that the dispute pertains to the alleged wrong entry made by the petitioner in Form GSTR 3B, in which, the RCM amount has been shown as Input Tax Credit.

7. Since the petitioner may have a case on merits and considering the fact that the petitioner has already deposited 10% of the disputed tax, this Court is inclined to come to the rescue of the petitioner by setting aside the impugned order and remitting the case back to the second respondent to pass fresh orders on merits and in accordance with law subject to the petitioner depositing another 15% of the disputed tax from its Electronic Cash Register to the credit of the second respondent within a period of 30 days from the date of receipt of a copy of this order.

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

9. 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. The second respondent shall thereafter pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of three months. Needless to state, the petitioner shall be heard before passing the order.

10. The petitioner is permitted to work out its remedy in the manner known to law in so far as the filing of the revised Return in GSTR 3B for correcting the error.

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

Index : Yes / No
Internet : Yes / No
apd

18.07.2024

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C.SARAVANAN, J.

apd

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