BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17232 of 2024
and
W.M.P(MD).Nos.14846 & 14847 of 2024

Tvl.Theni Gurus Textiles and Redymades,
Represented by its Proprietor G.A.M.Thandapani. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Theni -I Assessment Circle,
Theni. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent vide his order in reference No. 33AFNPD4241C2Z0/2018-19 dated 15.02.2024 and quash the same as it is illegal and in gross violation of Principles of Natural Justice and further direct the respondent to redo the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act.

For petitioner : Mr.A.Satheesh Murugan

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

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ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2. The petitioner is aggrieved by the impugned order dated 15.02.2024 passed for the assessment year 2018-19 bearing reference No: 33AFNPD4241C2Z0. The impugned order precedes a notice in Form ASMT-10 dated 24.12.2021, GST DRC-01 dated 16.02.2022 and personal hearing notices dated 13.03.2023 and 18.01.2024.

3. The case of the petitioner is that since the petitioner is a small scale operator, the petitioner was unaware of the notices that were posted in the GST common portal and therefore, the petitioner he did not respond to the same. It is further submitted that for the same reason, the petitioner was also unaware of the impugned order dated 15.02.2024 that was sent to the petitioner on the GST Common Portal.

4. It is further submitted that the petitioner may be given one opportunity to

explain the case.

5. The above submission is opposed by the learned Additional Government Pleader for the respondent, 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.***

6. 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.

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

order is quashed and the case is remitted back to the respondent to pass a fresh order, 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.

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 together with 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 passing the order.

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

Index : Yes / No
Internet : Yes / No
apd

26.07.2024

To

The Deputy State Tax Officer-1,
Theni -I Assessment Circle,
Theni.

C.SARAVANAN, J.

apd

W.P.(MD) No.17232 of 2024

26.07.2024