BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16279 of 2024
and
W.M.P.(MD) No.14146 of 2024

Tvl. Lakshana Gogas,
Represented by its Proprietor
R.Kalirajan,
S/o.Ramasamy,
No.3, Reddiar Compound,
Saroja Mill, Palani Road,
Dindigul - 624 001. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy State Tax Officer,
Dindigul Town Assessment Circle,
Commercial Tax Office,
Deputy Collector's Office Road,
Dindigul - 624 001. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records pertaining to the impugned order of the second respondent in GSTIN: 33AUYPK1842Q1ZU/2017-18 dated 19.12.2023 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

This Writ Petition is taken up for final disposal, at the time of admission, after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondents.

2. The petitioner is before this Court challenging the impugned order dated 19.12.2023 passed by the second respondent for the Assessment Year 2017-2018.

3. The learned counsel for the petitioner would submit that the petitioner is a small time operator and has failed to respond to the following Notices that preceded with the impugned order:-

i. Notice in Form GST ASMT-10 dated 28.07.2023;
ii. Intimation in Form GST DRC-01A dated 14.09.2023;
iii. Show Cause Notice in Form GST DRC-01 dated 21.09.2023; and
iv. Personal Hearing Notices dated 26.10.2023,

06.11.2023 and 29.11.2023.

4. It is submitted that for the same reason, the petitioner was unaware of the impugned order. It is submitted that during the 1st week of July, 2024, the petitioner has received the intimation regarding the impugned order and therefore approached this Court to redress its grievances.

5. It is submitted that the dispute pertains to the Assessment Year 2017-2018 which is reportedly covered under the VAT Regime until 30.06.2017 and thereafter under the GST Regime. It is submitted that the demands have been confirmed based on the turnover under the VAT Act by comparing the inward and outward supplies without co-relating to the opening balance for these demands. It is further submitted that the petitioner may be given one opportunity to explain the position.

6. On the other hand, the learned Government Advocate for the respondents would submit that this Writ Petition is devoid of merits and is liable to be dismissed in view 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, 2020 SCC OnLine SC 440. He would further submit that the appeal before the Appellate Authority is also time-barred in the light of the decision of the Hon'ble Supreme Court in **M/s.Singh Enterprises** Vs. **Commissioner of Central Excise, Jamshedpur and others**, (2008) 3 SCC 70.

7. Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondents, I am of the view that the petitioner deserves a chance to redress its grievance subject to the following terms:-

i. The impugned order stands quashed and the same shall be treated as Addendum to the Show Cause Notices that preceded with the impugned order.

ii. The petitioner shall deposit 10% of the disputed tax from its Electronic Cash Ledger, within a period of 30 days from today.

iii. Along with the above pre-deposit, the petitioner shall file consolidated reply to the Show Cause Notices and Addendum to the Show Cause Notices, within a period of 30 days from today.

iv. The petitioner shall co-operate with the respondents by filing reply and depositing 10% of the disputed tax within the stipulated period.

v. In case, the petitioner fails to comply with the above requirements, the above liberty granted by this Court to the petitioner shall stand revoked *sine die* without reference to this Court, in which case, the respondents are at liberty to proceed against the petitioner pursuant to the impugned order by treating that this order had not been passed quashing the impugned order.

8. In the result, this Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

19.07.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

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O/o.The Principal and Special Commissioner
of Commercial Taxes,
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Chennai - 600 005.

2.The Deputy State Tax Officer,
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C.SARAVANAN, J.

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