 BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18018 of 2024
and
W.M.P.(MD)No.15431 of 2024

Lekshmi Concrete Blocks,
Represented by its Sole Proprietor Suja P.S ... Petitioner

Vs.

1.Commercial Tax Officer,
Thuckalay-1 Assessment Circle,
Commercial Taxes Building,
Kattathurai,
Kanyakumari.

2. Joint Commissioner (ST),
Department of Commercial Taxes,
Commercial Taxes Building,
Tirunelveli. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records pertaining to the show caue notice issued u/s 73(1) of TNGST Act, dated 29.09.2023 and the impugned roder passed by the respondent u/s.74 of TNGST act dated 21.12.2023 vide proceedings in GSTIN No.33HUDPS2077D1ZM/2017-18 and quash the same as illegal.

For petitioner : Mr.M.Vivek Bharathi
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 dated 21.12.2023 passed by the first respondent for the assessment year 2017-18.

3. By the impugned order, the proposals sent in notices that preceded the impugned order have been confirmed. The demand has been confirmed on account of the denial of the Input Tax Credit though the GST registration of the supplier was retrospectively cancelled.

4. The learned counsel for the petitioner would submit that earlier, the petitioner was issued with a notice dated 23.06.2023, wherein, the petitioner was called upon to pay a sum of Rs.39,828/- along with applicable penalty and interest towards the ineligible Input Tax Credit within a period of 15 days. The petitioner

has also complied with the same on 30.08.2023.

5. It is submitted that the said notice dated 23.06.2023 was served to the petitioner by registered post. However, the notices that preceded the impugned order, were sent through web portal, for which, the petitioner was unaware. The petitioner is a small time operator and was under the impression that the notices would be sent to the petitioner through post as was done at the time of issuing notice dated 23.06.2023. Hence, the petitioner has not able to respond to the same.

6. It is submitted that the petitioner may be given one opportunity to substantiate the case.

7. 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.***

8. 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.

9. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, this Court is of the view that the petitioner may have a case on merits and therefore, discretion is exercised in favour of the petitioner by quashing the impugned order and remitting the case back to the first respondent to pass fresh orders on merits and in accordance with law.

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

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

12. In view of the instant order, the impugned order has been set aside and all recovery proceedings shall be kept in abeyance, pending further orders in the remand proceedings.

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

Index : Yes / No **31.07.2024**
Internet : Yes / No
apd

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C.SARAVANAN, J.

apd

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