BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.17407 of 2024
and
W.M.P.(MD) Nos.14940 and 14941 of 2024

Tvl.Fe. Nerve Building,
rep. by Proprietor
M.Balamurugan ... Petitioner

/vs./

The Deputy State Tax Officer-I,
Thanjavur I Assessment Circle,
Jurisdiction: Thanjavur -II,
C.T.Buildings,
Sanchidananda Moopanar Road,
Thanjavur 613 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN - 33AKGPB2074H1ZM/2018-19 dated 18.05.2022 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2018-19.

For Petitioner : Mr.Raja.Karthikeyan

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

ORDER

In this writ petition, the petitioner has challenged the impugned order dated 18.05.2022 passed by the respondent for the assessment year 2018-19. The impugned order has preceded a notice in DRC 01 on 01.02.2022.

2.The specific case of the petitioner is that the petitioner was unaware of the same and therefore, the petitioner did not file a reply to the notice in DRC 01 dated 01.02.2022. It is submitted that the petitioner was also unaware of the impugned order dated 18.05.2022.

3.It is further case of the petitioner that for the very same period, the petitioner was issued with a fresh notice in DRC 01 dated 13.06.2023, which was also replied by the petitioner on 22.06.2023. Taking note of the notice in DRC 01 dated 01.02.2022, the Department has now dropped the subsequent proceedings vide order dated 02.04.2024.

4.The learned counsel for the petitioner submits that the issue in DRC 01 dated 01.02.2022, which has culminated in the impugned order dated 18.05.2022 as also the notice in DRC 01 dated 13.06.2023, which proceeding has been closed, in view of the notice in DRC 01 dated 01.02.2022, are one and the same.

5.It is submitted that the petitioner has not availed any ineligible credit. It is submitted that the petitioner had excess credit even otherwise and therefore, the impugned demand that has been confirmed is without any merits.

6.On the other hand, the learned Additional Government Pleader for the respondent would submit that the writ petition is liable to be dismissed in the light 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*** reported in ***2020 SCC Online SC 440***.

7.It is submitted that even the appeal at this stage will be time barred in terms of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs.***

Commissioner of Central Excise, Jamshedpur and others reported in ***(2008) 3 SCC 70***.

8.Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Court is inclined to dispose of this writ petition at the time of admission after dispensing with the requirement of filing of counter.

9.The facts have been narrated above, which is not in dispute by the learned counsel on either side. The dispute pertains to the discrepancies/variants between the credit availed by the petitioner in its returns in GSTR 3B and auto populated input tax credit in GSTR-2A.

10.In my view, the petitioner may be given one opportunity to explain the case. Since the petitioner has slept over his right, this Court is inclined to come to the rescue of the petitioner on terms. Therefore, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law subject to the petitioner depositing 10% of the disputed tax from its Electronic Cash Register.

11.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued to the petitioner earlier. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The petitioner shall pay the amount from its Electronic Cash Register within the aforesaid period. The respondent will pass final orders on merits and in accordance with law within a period of 3 months thereafter.

12.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
Internet : Yes / No
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26.07.2024

To
The Deputy State Tax Officer-I,
Thanjavur I Assessment Circle,
Jurisdiction: Thanjavur -II,
C.T.Buildings, Sanchidananda Moopanar Road,
Thanjavur 613 001.

C.SARAVANAN, J.

mm

W.P.(MD) No.17407 of 2024

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