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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.17525 & 17526 of 2024
and
W.M.P.(MD)Nos.15063, 15064, 15084 & 15085 of 2024

Nila Traders,
Represented by its Proprietor M.Mohammed Ismail. ... Petitioner in both W.Ps

Vs.

The Deputy Commercial Tax Officer,
Dindigul (Rural), Dindigul, Madurai,
Dindigul Rural Circle,
Commercial Tax Offices Building,
Sub-Collector Office Road,
Dindigul – 624 001. ... Respondent in both W.Ps

<u>PRAYER in both W.Ps:</u> Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the respondent in reference No.ZD331023101550C/2021-22 and ZD331023101550C/2022-23, respectively dated 17.10.2023 and quash the same as arbitrary, illegal.

For petitioner in both W.Ps	: Mr.A.Satheesh Murugan
For respondent in both W.Ps	: Mr.R.Suresh Kumar Additional Government Pleader

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COMMON ORDER

By this common order, both these Writ Petitions are taken up for disposal.

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

3. These Writ Petitions have been filed by the petitioner for the assessment years 2021-22 and 2022-23, both dated 17.10.2023. The impugned orders have preceded the notices in DRC 01A dated 21.06.2023 and DRC 01 dated 28.08.2023 for both the assessment years.

4. It is noticed that the petitioner has not replied to the same, which is now therefore, culminated in the respective impugned orders.

5. It is submitted that the petitioner failed to notice the same as the impugned orders were posted in the GST common portal and therefore, the petitioner failed to approach this Court earlier.

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6. It is submitted that for the very same reason, the petitioner has also failed to notice the notices that preceded the impugned orders in DRC 01A dated 21.06.2023 and DRC 01 dated 28.08.2023.

7. The learned counsel for the petitioner would submit that the petitioner has an arguable case on merits and has been unjustly mulcted with huge tax liability of Rs.42,35,428/-, cumulatively under the respective impugned orders.

8. On the other hand, the learned Additional Government Pleader for the respondent would submit that these Writ Petitions are devoid of merits and 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.***

9. It is further submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments as held

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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 these Writ Petitions are liable to be dismissed.

10. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Court is of the view that the petitioner may have a case on merits and therefore, discretion is partly exercised in favour of the petitioner by setting aside the impugned orders and remitting the cases back to the respondent to pass fresh orders on merits, 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.

11. The impugned orders, which stand quashed, shall be treated as addendum to the respective show cause notices that preceded the respective impugned orders.

12. It is expected that the petitioner shall file reply within a period of 30

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days from the date of receipt of a copy of this order, together with above deposit. The respondent shall thereafter pass fresh orders 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.

These Writ Petitions are disposed of, with above directions. No costs. Consequently connected miscellaneous petitions are closed.

Index : Yes / No **29.07.2024**
Internet : Yes / No
apd

To

The Deputy Commercial Tax Officer,
Dindigul (Rural), Dindigul, Madurai,
Dindigul Rural Circle,
Commercial Tax Offices Building,
Sub-Collector Office Road,
Dindigul – 624 001.

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C.SARAVANAN, J.

apd

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