



W.P.(MD) No.16440 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.16440 of 2024
and
W.M.P.(MD) No.14246 of 2024**

Tvl.SMV.Ramprakash Co.,
rep. by Proprietor
Vengatajalapathy

... Petitioner

/vs./

The Deputy State Tax Officer-II,
Commercial Taxes Department,
Munichalai Road Circle,
Madurai 625 020.

... 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. 33AAHPV5624Q1Z1/2017-18 dated 29.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

For Petitioner : Mr.Raja Karthikeyan



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

ORDER

The writ petition is disposed of at the time of admission, after hearing the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

2.The petitioner is before this Court against the impugned assessment order dated 29.12.2023 passed for the assessment year 2017-18. The impugned order has preceded a notice in DRC 01A and thereafter, a notice in DRC 01 dated 30.09.2023. The impugned order has also preceded two notices fixing the personal hearing on two separate dates. However, the petitioner neither filed the reply nor participated during the personal hearing.

3.It is the case of the petitioner that the petitioner is a small time operator and therefore failed to notice the notices that preceded the impugned order. It is submitted that for the same reason, the petitioner also failed to note that the impugned order had been passed on 29.12.2023 for the aforesaid assessment year.



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4. That apart, it is submitted that the petitioner was suffering from Diabetic Wound Right Foot with Osteomyelitis 1st/2nd/3rd/4th Metatarsal with Proximal Phalanges Right Foot and had to recently undergo the procedure in G.S.Hospital, 15/9, Ramnad Road, Iravathanallur, Madurai -9.

5. On merits, the learned counsel for the petitioner would submit that there is no discussion in the impugned order. It merely extracts the content of the notice issued in DRC 01 dated 30.09.2023.

6. On the other hand, the learned Additional Government Pleader for the respondent would submit that the 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* reported in *2020 SCC Online SC 440* and that the appellate remedy is also time barred, in view of the decision of the Hon'ble Supreme Court in *Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur* reported in *2008 (221) E.L.T. 163 (S.C.)*.



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7.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 quash the impugned order and remit the case back to the respondent to pass a fresh order on merits and in accordance with law subject to the petitioner depositing 15% of the disputed tax from its Electronic Cash Register.

8.The impugned order, which stands quashed, shall be treated as an addendum to the show cause notices issued to the petitioner. The petitioner shall also file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall pass a fresh order on merits and in accordance with law within a period of 2 months thereafter. Needless to state that the petitioner shall be heard before final orders are passed.

9.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No

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To

The Deputy State Tax Officer-II,
Commercial Taxes Department,
Munichalai Road Circle,
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C.SARAVANAN, J.

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