BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16691 of 2024
and
W.M.P(MD)Nos.14446, 14448 of 2024

Mariyammal Stores
Represented by its Proprietor S.Balasubramanian. ... Petitioner

Vs.

The State Tax Officer,
Thanjavur I Assessment Circle,
No.20/3, Sachindanantha Moopanar Road,
Thanjavur – 1. ... Respondent

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 respondent in GSTIN:33AFHPB5272M1ZF/2017-18 dated 08.12.2023 and quash the same as illegal, arbitrary, against the provisions of law and against the principles of natural justice.

For petitioner : Mr.A.Chandra Sekaran

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

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ORDER

Heard learned counsel for the petitioner and learned Special Government Pleader for the respondent.

2. This Writ Petition is disposed of at the time of admission in view of the peculiar facts and circumstances of the case and in view of the similar orders passed by this Court, wherein the impugned orders were passed, without the petitioner participating in the show cause proceedings, have been set aside. In this case, the petitioner is aggrieved by the impugned assessment order dated 08.12.2023 for the assessment year 2017-18, bearing reference in GSTIN: 33AFHPB5272M1ZF

3. It appears that the petitioner failed to respond to the show cause notices in DRC 01A dated 09.09.2023, DRC 01 dated 29.09.2023 and three personal hearing notices dated 15.09.2023, 16.10.2023 and 07.12.2023 and has thus suffered by the adverse assessment order.

4. It appears that the dispute arises on account of the discrepancy between the amount in GSTR 2A and GSTR 3B.

5. The learned counsel for the petitioner submits that the petitioner may be given an opportunity to give proper reply.

6. On the other hand, the learned Additional Government Pleader for the respondent submits that this Writ Petition is 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.***

7. 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.

8. 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 and quashed the impugned order, subject to the petitioner depositing 25% of disputed tax to the credit of the respondent from his Electronic Cash Register within a period of 30 days from the date of receipt of this order.

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

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

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

Index : Yes / No
Internet : Yes / No
apd

24.07.2024

To
The State Tax Officer,
Thanjavur I Assessment Circle,
No.20/3, Sachindananatha Moopanar Road,
Thanjavur – 1.

C.SARAVANAN, J.

apd

W.P.(MD) No.16691 of 2024

24.07.2024