BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17447 of 2024
and
W.M.P.(MD)No.14984 of 2024

Tvl.Priyam Agencies,
Represented by its Proprietor K.Nagendran ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Nilakottai Assessment Circle,
Commercial Tax Office,
Nilakottai,
Dindigual – 624 208. ... 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 impugned order of the 2nd respondent in reference No.33AJSPN3100H1ZF/2017-18 dated 31.12.2023 and quash the same.

For petitioner : Mr.B.Rooban

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

ORDER

This Writ Petition is disposed of at the time of admission after hearing the learned counsel for the petitioner and learned Additional Government Pleader for the respondents.

2. In this Writ Petition, the petitioner has challenged the impugned assessment order passed by the second respondent on 31.12.2023 in the year 2017-18 bearing reference in 33AJSPN3100H1ZF/2017-18.

3. Although the impugned order that preceded the notices in ASMT 10 dated 03.08.2023, DRC 01A dated 21.09.2023, DRC 01 dated 30.09.2023 and personal hearing notice dated 03.11.2023, the petitioner has failed to respond any of the notices.

4. *Prima facie,* it appears that the dispute pertains to the discrepancy

between the Return filed by the petitioner in GSTR 1 and GSTR 3B.

5. The learned counsel for the petitioner submits that the petitioner has failed to notice the notices that preceded the impugned order as they were posted in the GST common portal. It is submitted that for the same reason, the impugned order that came to be passed on 31.12.2023, went unnoticed.

6. The learned counsel for the petitioner further submits that the petitioner has already deposited 10% of the disputed tax on 12.06.2024 for a sum of Rs.41,100/-.

7. The learned Additional Government Pleader for the respondents, on the other hand submits 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 submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents and considering the fact that the petitioner has deposited 10% of the disputed tax, the Court is inclined to direct the petitioner to deposit another 15% of the disputed tax to the credit of the second respondent from its Electronic Cash Register within a period of 30 days from the date of receipt of a copy of this order. Subject to above deposit, the impugned order is set aside and the case is remitted back to the second respondent to pass a fresh order on merits and in accordance with law.

10. The impugned order, which stands quashed, shall be treated as addendum to the show cause notice 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, together with above deposit. The second respondent shall pass a fresh orders 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.

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

30.07.2024

Index : Yes / No
Internet : Yes / No
apd

To

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The State Tax Officer,
Nilakottai Assessment Circle,
Commercial Tax Office,
Nilakottai,
Dindigual – 624 208.

C.SARAVANAN, J.

apd

W.P.(MD)No.17447 of 2024

30.07.2024