BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17089 of 2024
and
W.M.P.(MD)Nos.14698 & 14699 of 2024

Tvl.Thanya Cashew Nut Factory,
Represented by its Proprietor T.Mani. ... Petitioner

Vs.

The State Tax Officer,
Thuckalay 2 Assessment Circle @ Nagercoil,
Kanniyakumari. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent vide his order in GSTIN: 33BTSPM3570P1ZW/2017-18 dated 27.11.2023 and quash the same as it is illegal, without jurisdiction and in gross violation of principles of natural justice and further direct the respondent to re-do the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act.

For petitioner : Mr.A.Satheesh Murugan
For respondent : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

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

2. The petitioner is before this Court against the impugned order dated 27.11.2023 passed by the respondent for the assessment year 2017-18 bearing reference in GSTIN: 33BTSPM3570P1ZW/2017-18.

3. It is noticed that the impugned order has confirmed the demand proposed in the show cause notice in DRC 01 dated 16.09.2023.

4. The case of the petitioner is that the petitioner was unaware of the notice in DRC 01.

5. It is further submitted that accompanying the detailed notice was also not uploaded in the GST common portal. In any event, it is submitted that the petitioner was unaware of the notices that preceded the impugned order and therefore, the petitioner failed to participate in the proceedings.

6. The learned Additional Government Pleader for the respondent would submit that the respondent cannot be found faulted in passing the impugned order as the petitioner has failed to participate in the proceedings that preceded the impugned order.

7. It is submitted that not only the notice was uploaded in the GST common portal but also was also sent to the petitioner through post.

8. That apart, it is submitted 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.***

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 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.

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 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.

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

12. 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. 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 **26.07.2024**
Internet : Yes / No
apd

To

The State Tax Officer,
Thuckalay 2 Assessment Circle @ Nagercoil,
Kanniyakumari.

C.SARAVANAN, J.

apd

W.P.(MD) No.17089 of 2024

26.07.2024