BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16853 of 2024
and
W.M.P(MD).Nos.14520 & 14522 of 2024

Tvl.Saratha Fancy A to Z,
Represented by its Proprietor M.Selvakumar. ... Petitioner

Vs.

The State Tax Officer,
Thirupathur Assessment Circle,
No.14/2/42-B, Chinna Thouppu Street,
1st Floor,
Tirupathur – 630 211. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned assessment order on the file of the respondent vide GSTIN:33EXCPS9931P1ZM/2019-20 dated 23.01.2024 and quash the same as it is illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2019-20.

For petitioner : Mr.Raja.Karthikeyan

For respondent : Mr.J.K.Jayaseelan
Government Advocate

*****

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the impugned order dated 23.01.2024 passed for the assessment year 2019-20. The impugned order precedes the notices in ASMT-10 dated 05.04.2022, GST DRC 01A dated 23.08.2022 and GST DRC 01 dated 28.10.2022.

3. It is noticed that the two personal hearing notices dated 21.12.2023 and 10.01.2024 were sent to the petitioner. Despite the same, the petitioner has not appeared for the personal hearing and therefore, based on the available materials, the impugned order has been passed.

4. The case of the petitioner is that the petitioner is a small scale operator and was unaware of the notices that were posted in the GST common portal. It is further submitted that the petitioner was also unaware of the impugned order dated 23.01.2024 being sent to the petitioner on the GST Common Portal.

5. The above submission is opposed by the learned Government Advocate for the respondent, on the ground 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.***

6. 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.

7. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate 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.

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

9. 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 pass 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.

Index : Yes / No
Internet : Yes / No
apd

24.07.2024

To

The State Tax Officer,
Thirupathur Assessment Circle,
No.14/2/42-B, Chinna Thouppu Street,
1st Floor,
Tirupathur – 630 211.

C.SARAVANAN, J.

apd

W.P.(MD) No.16853 of 2024

24.07.2024