BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) Nos.17632 & 17633 of 2024
and
W.P.(MD)Nos.15138, 15139, 15184 & 15185 of 2024

Tvl.M.Muthupandi,
Contractor,
Represented by its Proprietor Muthupandi. ... Petitioner in both W.Ps

Vs.

The Deputy State Tax Officer-1,
O/o the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai. ... Respondent in both W.Ps

PRAYER in both W.Ps: 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 in GSTIN: 33AWZPM5806F2Z5/2018-19 dated 03.04.2023 and in GSTIN: 33AWZPM5806F2Z5/2019-20 dated 16.05.2023, respectively and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2018-19 and 2019-20, respectively.

For petitioner in both W.Ps : Mr.Raja.Karthikeyan

For respondent in both W.Ps : Mr.R.Suresh Kumar
Additional Government Pleader
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ORDER

By this common order, both these Writ Petitions have been disposed of.

2. Heard learned counsel for the petitioner and learned Additional Government Pleader for the respondents.

3. In these Writ Petitions, the petitioner has challenged the respective assessment orders as detailed below:

S.No	W.P.(MD)Nos.	Impugned order dated	Assessment Year	Demand Rs.
1.	17632 of 2024	03.04.2023	2018-19	1,78,421
2.	17633 of 2024	16.05.2023	2019-20	8,67,788

4. The impugned orders have preceded Show Cause Notices under Section 74 of the respective GST enactment dated 02.01.2023 and

30.12.2022 respectively.

5. It is submitted that the petitioner has not replied to the same stating that the petitioner was undergoing treatment for Kidney ailment, which stands recorded in the respective impugned orders. After the impugned orders have been passed, the petitioner has also paid the entire tax amount for the assessment year 2018-19 as confirmed vide impugned order dated 03.04.2023 and a sum of Rs.5,76,810/- out of Rs.8,67,788/- for the assessment year 2019-20.

6. It is submitted that the petitioner is a Government Contractor for various Government Departments. It is submitted that the demand is purely based on the discrepancies in the Auto Populated Input Tax in GSTR 2A and Returns filed by the petitioner in GSTR 3B and discrepancies between the information in GSTR 07 at the employers end and GSTR 3B Return filed by the petitioner.

7. It is submitted that in all likelyhood, a proper reconciliation can be made based on a certificate of the petitioner received from the Government Department and therefore, there will be no tax liability beyond an amount of Rs.1,78,421/-

that has been paid by the petitioner for the assessment year 2018-19 and further, a sum of Rs.5,76,810/- that has been paid by the petitioner pursuant to the request of the Department and on the advice of the Chartered Accountant. Hence, the case have to be remitted back for giving a proper explanation. Therefore, the learned counsel for the petitioner prays one opportunity to explain the case.

8. The above submission is opposed by the learned Additional Government Pleader for the respondent in both Writ Petitions, on the ground that these Writ Petitions are 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 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 these Writ Petitions are liable to be dismissed.

10. Having considered the submissions made by the learned counsel for the petitioner and learned Additional Government Pleader for the respondent and having considered the fact that the petitioner has not replied to the respective Show Cause Notices issued under Section 74 of the respective GST enactments, considering the predicament of the petitioner that the petitioner was ailing from Kidney problem and considering the fact that the petitioner has paid a sum of Rs.5,76,810/-, the Court is inclined to come to the rescue of the petitioner by quashing the impugned orders and remitting the cases back to the respondent to pass fresh orders on merits and in accordance with law.

11. The impugned orders, which stand quashed, shall be treated as addendum to the respective show cause notices that preceded the respective impugned orders.

12. The petitioner is directed to file consolidated reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall

thereafter pass fresh orders 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.

These Writ Petitions are disposed of, with above direction. No costs. Consequently connected miscellaneous petitions are closed.

29.07.2024

Index : Yes / No
Internet : Yes / No
apd

To

The Deputy State Tax Officer-1,
O/o the Assistant Commissioner (ST),
Madurai Rural (East) Assessment Circle,
Madurai.

C.SARAVANAN, J.

apd

W.P.(MD) Nos.17632 & 17633 of 2024

29.07.2024