BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **26.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17226 of 2024
and
W.M.P.(MD)Nos.14842 & 14843 of 2024

M/s.Magic Pearls Fine Arts,
Represented by its Partner: Palakka Valappil
Kamaludheen Kamarudheen. ... Petitioner

Vs.

The Deputy State Tax Offcier – 2,
Satthur-II Assessment Circle,
Virudhungar District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarifiled Mandamus to call for the records pertaining to the impugned order passed by the respondent vide his proceedings in DRC 07 Notice Ref No.33ABEFM5359B1ZJ/2017-18 dated 19.06.2023 and quash the same as it is illegal and passed in gross violation of principles of natural justice and further direct the respondent to redo the assessment afresh after providing me an opportunity of personal hearing as per the provisions of the GST Act, 2017.

For petitioner : Mr.A.Satheesh Murugan

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

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ORDER

Heard learned counsel for the petitioner and learned Senior Standing Counsel for the respondent.

2. The petitioner is before this Court against the impugned order in DRC 07 dated 19.06.2023 for the tax period 2017-18 bearing reference in Notice Ref No. 33ABEFM5359B1ZJ/2017-18.

3. The case of the petitioner is that the petitioner's registration was cancelled on 28.04.2023 with effect from 31.03.2023 on account of the non-filing of the Return.

4. It is submitted that after the petitioner's registration was cancelled on 28.04.2023 with effect from 31.03.2023, the petitioner did not access the GST common portal and therefore, failed to notice the notices issued to the petitioner in ASMT 10 dated 15.02.2022, notice in DRC 01A dated 29.03.2022 and notice in DRC 01 dated 07.03.2023.

5. It is submitted that for the same reason, the petitioner has also failed to notice the personal hearing notices issued on 10.04.2023 on 27.04.2023, which were sent to the petitioner through GST common portal.

6. It is further submitted that the petitioner may be given one opportunity to explain the case.

7. 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.***

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 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 exercised partly 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 its Electronic Cash Register within a period of 30 days from the date of receipt of this order.

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 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.

26.07.2024

Index : Yes / No
Internet : Yes / No
apd

To

The Deputy State Tax Offcier – 2,
Satthur-II Assessment Circle,
Virudhungar District.

C.SARAVANAN, J.

apd

W.P.(MD) No.17226 of 2024

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