BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.17676 of 2024
and
W.M.P.(MD)No.15165 of 2024

Tvl.Guru Krishna Tex,
Represented by its Proprietor Gnaniyar Sangaralingam. ... Petitioner

Vs.

1.Government of India,
Ministry of Finance (Department of Revenue),
Represented by its Director,
Central Board of Indirect Taxes and Customs,
New Delhi.

2.The Assistant Commissioner,
O/o. the Assistant Commissioner of (ST)-II,
Commercial Taxes Building,
Union Office Opposite,
Tenkasi Main Road,
Rajapalayam.

3.The Authorized Officer,
O/o the Deputy State Tax Office -I,
Tamilnadu Commercial Taxes Department,
Rajapalayam II Assessment Circle,

Rajapalayam,
Virudhunagar. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus to call for the records pursuant to the impugned order passed by the third respondent GSTIN:33GYBPS9362E1Z5/2019-20 dated 28.06.2024 and quash the same and consequentially direct the respondents herein to give the benefit of notification No.7/2023 dated 31.03.2023 to the petitioner firm and waive late fee in excess of Rs.10,000/- and in respect of the petitioner firm for the assessment year 2019-20.

For petitioner : Ms.A.Lakshmi
for M/s.Polax Legal Solutions

For respondents : Mr.K.Maharajan
Central Government Standing Counsel for R1
Mr.J.K.Jayaselan
Government Advocate for R2 & R3

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ORDER

Heard learned counsel for the petitioner, learned Central Government Standing Counsel for the first respondent and learned Government Advocate for the respondents 2 and 3.

2. The petitioner is before this Court against the impugned order dated 28.06.2024 passed by the third respondent for the assessment years 2019-20,

bearing reference in GSTIN:33GYBPS9362E1Z5.

3. By the impugned order, the third respondent has ordered as under:

Having made this points clear, the proposal to pay the late fee stood continue and as per section 73(9) the proceedings was concluded.

Note:

Section 75(4) of GST ,2017 reads as" An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.".

Section 75(4) of TNGST act implies the personal hearing must be provided only when the taxpayer opted for personal hearing which was specifically mentioned in the reply of DRC-01(DRC-06) or any adverse measures taken against the taxpayer.

The grounds and quantification are attached / given below:

1. Grounds: Section:44,47,73 . 2. Quantification : As detailed in Table below

Since the tax payer had made a non willful misstatement, Proceedings were initiated hereby under section 73 of the Tamil Nadu Goods and Services tax Act-2017. The amount of tax / interest / penalty payable by the tax payer under section 73(5) with reference to the said case as ascertained by the undersigned in terms of the available information, is given below:

Table :1 Tax, interest and penalty determined to be paid

Table:1		
ACT	PERIOD	LATE FEE (Rs.)
CGST	2019-2020	58600
SGST		58600
TOTAL		117200

In the light of provisions of the act and in the failure of the taxpayer to furnish necessary documentary evidences to deny the proposal forwarded in the notices, despite given with personal hearing opportunities at various dates, which would suffice them to present the same before the authority, the proposal is confirmed and orders are passed.

4. The present Writ Petition is inspired from Notification No.7/2023-Central Tax, dated 31.03.2023. Text of the Notification reads as under:

S.O......(E).– In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:—

Table

Serial Number	Class of registered persons	Amount
(1)	(2)	(3)
1.	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.
2.	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1st day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

5. The learned counsel for the petitioner has placed reliance on the decision of the Kerala High Court under similar circumstances in the case of ***Anishia Chandrakanth vs.Superintendent, Central Tax and Central Excise in W.P.(C)Nos.30644, 32069, 38545, 38547, 38891, 39203 & 40762 of 2023 reported in (2024) 04 KL CK 0099 dated 10.07.2024.***

6. The learned counsel for the petitioner has placed reliance on para 25 from the said decision, which reads as under:

> *"25. When the Government itself has waived late fee under the aforesaid tow notifications Nos.7/2023 dated 31.03.2023 and 25/2023 dated 07.07.2023 in excess of Rs.10,000/-, in case of non-filers there appears to be no justification in continuing with the notices for non payment of late fee for belated GSTR 9C, that too filed by the taxpayers before 01.04.2023, the date on which one time amnesty commences.*
>
> *In view of the aforesaid discussion, I am of the view that notices are unjust and unsustainable to the extent it sought to collect late fee for delay in filing GSTR 9C. However, it is made clear that the petitioners will not be entitled to claim refund of the late fee which has already paid by them over and above Rs.10,000/-"*

7. The learned Central Government Standing Counsel for the first respondent, on the other hand, would submit that the amnesty scheme under Notification No.7/2023-Central Tax dated 31.03.2023 and Notification No. 25/2023 dated 07.07.2023 is applicable to only those who failed to file Return within a time stipulated therein, whereas in this Writ Petition, the time for filing Return expired on 31.03.2021 and that the petitioner filed Return on 07.11.2022 and therefore, the petitioner's case is not covered by the aforesaid notification.

8. I have considered the submissions made by the learned counsel for the petitioner, learned Central Government Standing Counsel for the first respondent and learned Government Advocate for the respondents 2 and 3.

9. It is evident that the intention of the Government is not to harass the assessee, who come forward to file their Return for the assessment years mentioned in the Notification within the stipulated period. Thus, it would imply that the benefit would extend to the petitioner as well, who filed the Return although belatedly on 07.11.2022, it is before the cut off date mentioned in the above Notification.

10. It would be unjust to deny the benefit to the petitioner merely because the petitioner filed the Return prior to the issuance of the amnesty in Notification No.7/2023-Central Tax dated 31.03.2023 and Notification No.25/2023 dated 07.07.2023 and confine to amnesty only to those assessees who filed the Return between 01.04.2023 and 30.06.2023. A harmonious reading of the above Notification indicates that intention of the Government to encourage filing of returns. Therefore, this Court is of the view that the petitioner is entitled to the

benefit of Notification No.7/2023-Central Tax dated 31.03.2023 and Notification No.25/2023 dated 07.07.2023

11. Under these circumstances, the impugned order is set aside and the case is remitted back to the third respondent to pass fresh orders on merits by extending the benefit of the Notification No.7/2023-Central Tax, dated 31.03.2023. The third respondent is directed to pass a fresh order on merits and in accordance with law as expeditiously as possible preferably within a period of three months from the date of receipt of a copy of this order.

This Writ Petition is allowed, with above directions. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

Index : Yes / No
Internet : Yes / No
apd
To
1.The Assistant Commissioner,
O/o. the Assistant Commissioner of (ST)-II,
Commercial Taxes Building,
Union Office Opposite,
Tenkasi Main Road,
Rajapalayam.

2.The Authorized Officer,
O/o the Deputy State Tax Office -I,
Tamilnadu Commercial Taxes Department,
Rajapalayam II Assessment Circle,
Rajapalayam,
Virudhunagar.

C.SARAVANAN, J.

apd

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