BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.18275 of 2024
and
W.M.P(MD)Nos.15559 & 15560 of 2024

M/s.Ans Indotrade Enterprise Private Limited,
Represented by its Director Saravanan. ... Petitioner

Vs.

The Assistant Commissioner,
Pudukottai-I Assessment Circle,
Commercial Taxes Buildings,
Pudukottai District. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order passed by the Respondent vide her proceedings in GSTIN :33AALCA8258Q1ZX/2017-18 and its summary order in DRC-07 bearing Reference No.ZD331223267529A, dated 29.12.2023 and quash the same as it is illegal and passed in gross violation of principles of natural justice and further direct the Respondent to re-do the assessment afresh after providing petitioner an opportunity of Personal Hearing as per the provisions of the GST Act, 2017.

For Petitioner : Mr.K.Srinivasan

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

ORDER

The petitioner is before this Court as against the impugned order, dated 29.12.2023 passed by the respondent for the assessment year 2017-18. By the impugned order, the demand proposed in show cause notice in DRC 01, dated 29.09.2023 has been confirmed.

2. The petitioner was not only issued with personal hearing notice electronically, but also manually. In fact the case was listed for personal hearing on 25.12.2023, on which date the petitioner appears to have appeared and requested time for filing reply and for personal hearing.

3. The learned counsel for the petitioner has filed a copy of the letter bearing the acknowledgement seal of the respondent which is disputed by the respondent. The case of the petitioner is that demand has been confirmed based on the profit and loss account. It is submitted that expenses incurred have been treated as taxable turn over of the petitioner and tax has been demanded in the

impugned order. It is submitted that the impugned order has confirmed an arbitrary demand on the petitioner and therefore, the petitioner may be given one opportunity to explain the case afresh.

4. 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.***

5. 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.

6. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent, the

petitioner can be given an opportunity to ventilate his grievance before the respondent on terms. Therefore, the petitioner shall deposit 20% disputed tax confirmed by the impugned order from Electronic Cash Ledger within a period of thirty (30) days from the date of receipt of copy of this order. The impugned order, dated 29.12.2023 passed by the respondent is quashed and the case is remitted back to the respondent to pass a fresh order on merits. The impugned order which stands quashed shall be treated as Addendum to the Show Cause Notice in DRC 01, dated 29.09.2023.

7. The petitioner shall file a consolidated reply within a period of 30 days from the date of receipt of copy of this order. The respondent shall thereafter proceed to pass a final order on merits and in accordance with law, as expeditiously as possible, preferably, within a period of three (3) months from the date of reply to be filed by the petitioner. It is made clear that in case the petitioner fails to either file a reply or deposit the amount as directed above, the respondent is at liberty to proceed against the petitioner, as if this writ petition had been dismissed today *in limine*. It is needless to state, the petitioner shall be heard before passing the final order.

8. In view of the above, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
gbg

To

The Assistant Commissioner,
Pudukottai-I Assessment Circle,
Commercial Taxes Buildings,
Pudukottai District.

C.SARAVANAN, J.

gbg

W.P.(MD).No.18275 of 2024

02.08.2024