BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2024**

CORAM:

**THE HONOURABLE MR.JUSTICE C.SARAVANAN**

**W.P.(MD) No.18130 of 2024**
**and**
**W.M.P.(MD)Nos.15476 & 15478 of 2024**

K.Anantharaj,
Works Contractor. ... Petitioner

Vs.

The Deputy State Tax Officer-2,
Sattur 1 Assessment Circle,
Virudhungar. ... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent ivde order in GSTIN: 33BUJPA1262L1ZU dated 25.07.2023 (financial year 2020-21) and quash the same as it is illegal and passed in gross violation 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 the learned counsel for the petitioner and learned Government Advocate for the respondent.

2. The petitioner is before this Court against the impugned order dated 25.07.2023 passed by the respondent for the period from April 2020 to March 2021.

3. The petitioner has failed to participate in the adjudication proceedings pursuant to the notice issued to the petitioner in DRC 01 dated 17.03.2023. The petitioner has also failed to appear before the respondent despite the notices fixed the personal hearings on 04.04.2023 and 14.07.2023 being issued to the petitioner through SMS and E-Mail.

4. The learned counsel for the petitioner submits that the petitioner has a fair case to succeed. As the taxable turn over has been re-determined on account of the difference between the amounts in GSTR 01 and GSTR 07 of the employer.

5. It is further submitted that the petitioner's registration was cancelled on 24.03.2021 with effect from 01.02.2021 and thus, the petitioner was unaware of the notices that preceded the impugned order.

6. It is submitted that for the same reason, the petitioner was also unaware of the impugned order being passed on 25.07.2023.

7. The learned counsel for the petitioner submits that only after the respondent informed that the petitioner was in arrears of tax for a period of 2020-21 in terms of the impugned order, the petitioner downloaded information from the website which is produced before this Court.

8. It is submitted that the Court may put to any reasonable terms so that the petitioner can explain the case. It is submitted that the in all likewise, the petitioner should succeed if the petitioner is given one opportunity to explain.

9. 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.***

10. 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.

11. Having considered the arguments advanced by the learned counsel for the petitioner, 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 by quashing the impugned order and remitting the case back to the respondent to pass a fresh order on merits, subject to the petitioner depositing 25% of disputed tax to the credit of the first respondent from its Electronic Cash Register within a period of 30 days from the

date of receipt of this order.

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

13. 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 pass a fresh order 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 **01.08.2024**
Internet : Yes / No
apd
To
The Deputy State Tax Officer-2,
Sattur 1 Assessment Circle,
Virudhungar.

**C.SARAVANAN, J.**

apd

**W.P.(MD) No.18130 of 2024**

**01.08.2024**