BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18277 of 2024
and
W.M.P(MD).Nos.15562 & 15563 of 2024

M/s.MRP Traders,
Represented by its Proprietor Muthu Sangili Rajendran. ... Petitioner

Vs.

The Deputy State Tax Officer (ST)-II,
Srivilliputhur Assessment Circle,
Commercial Taxes Buildings,
Tenkasi Road,
Rajapalayam – 626 117. ... 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 vide his his proceeding in DRC07 case ID No.GSTIN:33BTYPR0973F2Z4/2021-22 dated 13.12.2023 and quash the same as it is illegal and in gross violation of Principles of Natural Justice and further direct the respondent to pass order in accordance with law after providing an opportunity of Personal Hearing as per the provisions of GST Act.

For petitioner : Mr.A.Satheesh Murugan

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

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ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. The petitioner is aggrieved by the impugned order dated 13.12.2023 passed for the assessment year 2021-22. The impugned order precedes the notices in ASMT 10 dated 28.07.2023, GST DRC 01A dated 04.09.2023 and GST DRC 01 dated 03.10.2023.

3. It is noticed that a personal hearing notice dated 06.11.2023 was sent to the petitioner. Despite the same, the petitioner has not appeared for the personal hearing and therefore, based on the available materials, the impugned order has been passed.

4. The case of the petitioner is that the petitioner is a small scale operator and was unaware of the notices that were posted in the GST common portal. It is further submitted that the petitioner was also unaware of the impugned order

dated 13.12.2023 which was sent to the petitioner on the GST Common Portal.

5. 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.***

6. 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.

7. Having considered the arguments advanced by the learned counsel for the petitioner, the learned Additional Government Pleader 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 first 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.

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

9. 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 first 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
Internet : Yes / No
apd

01.08.2024

To
The Deputy State Tax Officer (ST)-II,
Srivilliputhur Assessment Circle,
Commercial Taxes Buildings,
Tenkasi Road,
Rajapalayam – 626 117.

C.SARAVANAN, J.

apd

W.P.(MD) No.18277 of 2024

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