BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **31.07.2024**

CORAM:

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

W.P.(MD) No.17900 of 2024
and
W.M.P.(MD) No.15350 of 2024

Tvl.Sri Abhisek India,
Proprietor Ramdev Purba (died)
rep. by his legal heir
wife Vinod Purba ... Petitioner

/vs./

The Assistant Commissioner (ST),
Sivakasi -3 Assessment Circle,
Commercial Taxes Building,
NGO Colony, Satchiyapuram,
Sivakasi 626 123. ... Respondent

<u>PRAYER:</u> Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN - 33AAPPR9831B1ZJ/2017-18 dated 31.12.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2017-18.

For Petitioner : Mr.Raja.Karthikeyan

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

ORDER

The petitioner has filed this writ petition for a Certiorarified Mandamus to quash the order of the respondent dated 31.12.2023 bearing Ref.No.GSTIN-33AAPPR9831B1ZJ/2017-18 and to direct the respondent to redo the assessment proceedings for the assessment year 2017-18.

2.The deponent in the affidavit filed in support of this writ petition is the wife of late.Ramdev Purba, the Proprietor of Tvl.Sri Abhisek India. It is the case of the petitioner that the impugned order has been passed against a deceased person in respect of the assessment year 2017-18.

3.The learned counsel for the petitioner submits that the only discrepancy pointed out in the impugned order appears to be the discrepancy between the information given by the petitioner in GSTR 3B and the auto populated returns in GSTR 2A.

4.It is submitted that the petitioner concern had imported consignment of goods from Mapele Tree General Trading LLC, Dubai and that at the time of import, the petitioner concern had paid IGST and had availed input tax credit, which was not reflected in the GSTR 2A initially. It is submitted that presently it is reflected in the GSTR 2A with effect from 01.01.2022.

5.The learned counsel for the petitioner submits that one opportunity may be given to the petitioner, as the petitioner was unaware of the impugned order that came to be passed on 31.12.2023, as after the death of the proprietor, late Ramdev Purba, the business was closed. It is submitted that for the very same reason, the dependent also failed to note that the impugned order has been passed on 31.12.2023 and the notices that preceded the impugned order were passed.

6.Opposing the prayer, the learned Government Advocate for the respondent would submit that the writ petition is devoid of merits in the light of the decision of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440*** and the appeal will also be time barred in terms of the decision of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of C.Ex., Jamshedpur*** reported in ***2008 (221) E.L.T. 163 (S.C).***

7.Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, the impugned order can be set aside and the case can also be remitted back to the respondent to pass a fresh order on merits and in accordance with law.

8.The impugned order, which stands quashed, shall be treated as addendum to the show cause notice issued earlier. The petitioner shall file a reply within a period of 30 days from the date of receipt of a copy of this order. The respondent shall thereafter pass a fresh order on merits and in accordance with law within a period of three months. Needless to state that the petitioner shall be heard, before fresh order is passed.

9.Since the petitioner appears to have a *prima facie* case on merits, the personal account of the petitioner, which was freezed by the respondent, is directed to be lifted. It is made clear that all coercive action against the petitioner shall be subject to the final outcome of the order to be passed in the remand proceeding.

10.The Writ Petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No
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31.07.2024

To

The Assistant Commissioner (ST),
Sivakasi -3 Assessment Circle,
Commercial Taxes Building,
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Sivakasi 626 123.

C.SARAVANAN, J.

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