BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.18367 of 2024
and
W.M.P(MD)No.15633 of 2024

Tvl.Suresh Sethu,
Partner of M/s.Shree Hari Traders. ... Petitioner

Vs.

The Assistant Commissioner,
Sattur 2 Assessment Circle,
1st Floor, C.T.Building, Satchiyapuram,
Sivakasi-626 124. ... 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 the records on the file of the respondent in GSTIN. 33ADIFS4884R1Z4 / 2018-19, dated 02/03/2023 and to quash the same as illegal , arbitrary, wholly without jurisdiction, and direct the respondent to issue notice to the petitioner then pass an assessment order afresh after affording an sufficient opportunity within such time as may be directed by this Court.

For Petitioner : Mr.N.Sudalai Muthu

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner before this Court long after the impugned assessment order came to be passed on 02.03.2023.

2. The learned counsel for the petitioner would submit that the petitioner had voluntarily surrendered the registration and the registration was cancelled on 04.10.2021. It is submitted that on the date of cancellation of the registration, the petitioner had stock of goods on which petitioner had availed input tax credit and therefore, the petitioner was required to reverse the credit on the date of closure of the business.

3. It is submitted that the show cause notice in DRC 01 was issued to the petitioner on 21.06.2022. However, it was issued for the assessment year 2018-19 when indeed the dispute relates to the assessment year 2021-22 on account of closure of the petitioner's business and surrendering of the business with effect from 04.10.2021. It is submitted that since the show cause notice itself was issued for the assessment year 2018-19, the department has proceeded to invoke Section 74 of the Tamil Nadu Goods and Services Tax

(TNGST) Act. As a result of which, the petitioner has been mulcted with penalty and interest liability.

4. It is submitted that there is no question of invoking Section 74 of the respective GST Enactment against the petitioner as dispute ought to have been confined only for the assessment year 2021-22 and not for the assessment year 2018-19. It is submitted that the impugned order has been passed mechanically and therefore, the petitioner may be given one opportunity to reply to the show cause notices that were issued in DRC 01, dated 21.06.2022 and 28.10.2022.

5. It is submitted that also the petitioner had given a reply and had participated in the proceedings. The petitioner however failed to notice that the impugned order had been passed on 02.03.2023 and that the department has recovered the entire tax from the petitioner on 03.06.2023 for a sum of Rs. 94,256/-. The learned counsel for the petitioner has placed reliance on the decision of this Court rendered in ***Sakthi Steel Trading Vs. Assistant Commissioner (ST)***. Although the petitioner has slept over with rights, by not either filing a statutory appeal of explaining the issue beforeby approaching this Court on an earlier occasion, I am of the view the petitioner can be given an

opportunity to explain the case as *prima facie* and it appears the demand pertains to the assessment year 2021-22 and not 2018-19.

6. Under these circumstances, I am inclined to dispose this writ petition on the following terms:

(i) The impugned order, dated 02.03.2023 passed by the respondent is quashed and the case is remitted back to the respondent to pass a fresh order on merits.

(ii) The impugned order which stands quashed shall be treated as Addendum to the Show Cause Notices in DRC 01, dated 21.06.2022 and 28.10.2022.

(iii) 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.

(iv) It is made clear that in case the petitioner fails to file a reply within a time stipulated, 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.

7. In view of the above terms, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Assistant Commissioner,
Sattur 2 Assessment Circle,
1st Floor, C.T.Building, Satchiyapuram,
Sivakasi-626 124.

C.SARAVANAN, J.

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