BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18782 of 2024
and
W.M.P.(MD) No.15893 of 2024

Tvl.Anwar Traders,
Rep. by Partnership H.Rabia Basri,
No.49, Middle Street,
Methamarpalayam,
Palayamakottai,
Tirunelveli - 627 005. ... Petitioner

Vs.

The State Tax Officer (Inspn.) - 4,
Office of the Deputy Commissioner (IW),
Tirunelveli District,
Tirunelveli. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the impugned Assessment Order on the file of the respondent vide GSTIN: 33AAFFA1037J1ZW/2017-18 dated 04.03.2024 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.R.Suresh Kumar
Additional Government Pleader

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ORDER

The petitioner is before this Court against the impugned Assessment Order dated 04.03.2024 passed by the respondent under Section 74 of the respective GST Enactments for the Assessment Year 2017-2018.

2. The petitioner's premise was inspected from 17.04.2023 to 19.04.2023 under Section 67 of the TNGST Act, 2017, wherein, certain defects were pointed out. It appears that in response to the same, the petitioner has paid certain amounts which has been captured in the impugned Assessment Order which reads as under:-

> *For defect No.2 the tax payer paid the tax due of CGST Rs.16,742/- & SGST Rs.16,742/- through DRC-03 on 19.04.2023 (ARN AD330423029052P) at the time of inspection and proposed levy of interest under section 50(1) and penalty under sec.74(5) is confirmed.*

3. Thereafter, the petitioner was issued with Notice in Form GST DRC-01A dated 14.09.2023 followed by the Notice in Form GST

DRC-01 dated 23.09.2023. The petitioner failed to respond to the same. Thereafter, the petitioner was issued with three Personal Hearing Notices dated 28.12.2023, 20.02.2024 & 27.02.2024. The petitioner has responded to the last mentioned Personal Hearing Notice dated 27.02.2024. However, there are no records to show that the said reply to the Personal Hearing Notice dated 27.02.2024 was received by the respondent.

4. The respondent, in the impugned order, has recorded that the petitioner has not filed any objection and since the petitioner failed to file a reply or avail of the opportunity to be heard, the petitioner is deemed to have no objections to the reasons stated in the notices.

5. The learned counsel for the petitioner would submit that the petitioner has a fair case to defend and therefore, one more opportunity may be given to the petitioner to respond to the Notices. The learned counsel for the petitioner would further submit that the petitioner may be given a reasonable amount of time as the Court may deem it fit.

6. The learned Additional Government Pleader for the respondent would submit that this Writ Petition is devoid of merits, as the petitioner

has an alternate remedy before the Appellate Authority namely, Deputy Commissioner (GST Appeals) (State Tax), Madurai & Tirunelveli at CT Buildings, A.R.Line Road, Palayamcottai, under Section 107 of the respective GST Enactments and therefore, pray for dismissal of this Writ Petition.

7. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and considering the conduct of the petitioner in depositing a part of amount in pursuance of the inspection, to balance the interest of the petitioner and the Revenue Department, the impugned order is quashed and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law, within a period of 3 months from today.

8. The impugned order which stands quashed in this order shall be treated as addendum to the Notice in Form GST DRC-01 dated 23.09.2023. The petitioner shall file a consolidated reply within a period of 30 days from today. The petitioner is also directed to deposit 10% of the balance amount within a period of 30 days from today.

9. Needless to state, the petitioner shall be heard before the final order is passed.

10. It is made clear that in case the petitioner failed to deposit the amount or file reply or both within the aforesaid period, the respondent is at liberty to proceed against the petitioner as this Writ Petition was dismissed *in limine*.

11. In the result, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

02.08.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

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Copy To:

The State Tax Officer (Inspn.) - 4,
Office of the Deputy Commissioner (IW),
Tirunelveli District,
Tirunelveli.

C.SARAVANAN, J.

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