BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.18842 of 2024
and
W.M.P(MD).No.15939 of 2024

Tvl.Sri Ganesh Agencies,
Represented by Partner R.Chandrabose. ... Petitioner

Vs.

The State Tax Officer,
Madurai Rural West Assessment Circle,
Madurai – 625 020. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the 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:33AASFS9764P1ZZ/2017-18 dated 22.12.2023 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.R.Suresh Kumar
Additional Government Pleader

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ORDER

Heard the learned counsel for the petitioner and the learned Additional

Government Pleader for the respondent.

2. The petitioner is aggrieved by the impugned order dated 22.12.2023 passed for the assessment year 2017-18. The impugned order precedes the notice in Form GST DRC 01A dated 15.09.2023 and Form GST DRC 01 dated 30.09.2023.

3. It is noticed that the two personal hearing notices were 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 22.12.2023 that was sent to the petitioner on the GST Common Portal.

5. The above submission is opposed by the learned Additional Government

Pleader 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 and 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 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 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 petition is closed.

02.08.2024

Index : Yes / No
Internet : Yes / No
apd

To

The State Tax Officer,
Madurai Rural West Assessment Circle,
Madurai – 625 020.

C.SARAVANAN, J.

apd

W.P.(MD) No.18842 of 2024

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