BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.25473 of 2022
and
W.M.P.(MD)No.19553 of 2022

S.D.Packiaraj ... Petitioner

Vs.

1.The Deputy Commissioner of GST & Central Excise,
Madurai I Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

2.The Commissioner of CGST & Central Excise,
Madurai – I Division,
No.5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002. ... Respondents

[R2 is *suo motu* impleaded vide order dated
15.04.2024 made in W.P.(MD)No.25473 of 2022]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order in Original No.39/2022-ST in MAD – ST – 000 – ASC – 39/2022 – ST, dated 18.03.2022 and quash the same and consequently, forbear the first respondent to collect the tax in pursuant to the impugned order issued by the first respondent to collect tax in pursuant to the impugned order issued by the first respondent.

For Petitioner : Mr.V.S.Kumaraguru

For Respondents : Mr.R.Nandakumar
Standing Counsel

O R D E R

The petitioner has challenged the impugned order bearing reference Order-in-Original No.39/2022-ST, dated 18.03.2022, issued by the first respondent, confirming the demand on the petitioner in the proposals contained in the show cause notice bearing SCN.No.08/2020-ST, dated 16.12.2020.

2. It is noticed that the petitioner has alternate remedy before the appellate Commissioner under Section 85 of the Finance Act, 1994. There is a marginal delay in filing the present Writ Petition to set aside the impugned order, as the original copy of the order enclosed along with the typed set bears the endorsement in hand that the impugned order was received on 23.03.2022 at 12.30 p.m. Since the petitioner has an alternate remedy before the appellate Commissioner under Section 85 of the Finance Act, 1994, I am inclined to dispose of this Writ Petition by giving liberty to the petitioner to file statutory appeal before the appellate Commissioner within a period of 30 days from the date of receipt of a copy of this order subject to the petitioner depositing 20% of the disputed tax considering the delay involved. If such an appeal is filed by the petitioner within 30 days from the date of receipt of a copy of this order together with pre-deposit of 20% *i.e.,* 10% over and above what is contemplated under Section 35-F of the Central Excise Act, 1944, the appeal shall be entertained and disposed by the Commissioner on merits and in accordance with law.

3. Since the Deputy Commissioner of GST & Central Excise, Madurai I Division, has been arrayed as the sole respondent in this Writ Petition, the Commissioner of CGST & Central Excise, Madurai – I Division, No.5, V.P. Rathinasamy Nadar Road, Bibikulam, Madurai – 625 002, is *suo motu* impleaded as second respondent in the Writ Petition.

4. This Writ Petition stands disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes/ No
Neutral Citation: Yes / No 15.04.2024
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To

1.The Deputy Commissioner of GST & Central Excise,
Madurai I Division,
No.5, V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

2.The Commissioner of CGST & Central Excise,
Madurai – I Division,
No.5, V.P. Rathinasamy Nadar Road,
Bibikulam, Madurai – 625 002.

C.SARAVANAN, J.

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W.P.(MD) No.25473 of 2022

15.04.2024