BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.26384 of 2022
&
W.M.P.(Md).Nos.20570 and 20571 of 2022

M.S.Trading & Service
Rep by its Proprietor
M.Sampathkumar
New No.3/22, Philomina Nagar
Thanjavur-613 006 ... Petitioner

Vs.

1. The Commissioner
Commercial Taxes
Ezhilagam
Chepauk, Chennai-5

2.The Deputy Commissioner (ST)
No.6-C, Old Post Office Road
Trichy-620 001

3.The Assistant Commissioner (ST)
Thanjavur-II Circle
Thanjavur ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order in GSTIN

33DNOPS6976RIZK/2018-19 dated 25.04.2022 passed by the 3rd respondent and quash the same as illegal arbitrary wholly without jurisdiction and in violation of principle of natural justice direct the 3rd respondent to pass assessment order afresh after affording an opportunity of the petitioner.

For Petitioner : No Appearance

For Respondents : Mr.J.K.Jayaseelan. Govt.Advocate

ORDER

Although there is no representation on behalf of the petitioner in this writ petition, it is noticed that petitioner has challenged the impugned order dated 25.04.2022 passed by the 3rd respondent herein for the assessment year 2018-2019. Operative portion of the impugned order reads as under:

> *The claim of ITC in excess of what is auto populated in GSTR 2A is construed as tax collected but not paid by the supplier. Hence as per Sec.16(2)(c) of the TNGST Act 2017 the respective ITC is construed as ineligible since tax charged in respect of the supply has not actually been paid to the government.*
>
> *2. In this regard, ASMT-10 notice issued on*

14.12.2021.Tax payer not replied. Then DRC-01 notice issued on 17.02.2022 and also personal hearing opportunity given on 07.03.2022,11.03.2022 and 18.03.2022. But the taxpayer did not avail those opportunity. Hence, you had nothing to say in this matter and it is construed that you had made a non-willful misstatement and proceedings DRC-07 is initiated hereby under Section 73 of the TNGST Act,2017."

3. Reading of the above indicates that petitioner has not participated in the adjudication mechanism prescribed under the TNGST Act, 2017 and TNGST Rules,2017. The Writ Petition has been filed on 21.11.2022. Although learned counsel for the respondent would submit that Writ Petition has been dismissed 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, 2020 SCC OnLine SC 440,*** I am of the view in the interest of justice, the impugned order can be set aside and the matter is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of 60 days from the date of receipt of a copy of this order. The impugned order which stands quashed shall be treated as corrigendum to the notices issued to the petitioner prior to the impugned order. It is expected that the petitioner will cooperate with the respondent.

Petitioner shall also deposit 10% of the disputed tax amount along with a reply within a period of 30 days from the date of receipt of a copy of this order.

4. It is expected that respondent will issue a notice to the petitioner calling upon the petitioner to deposit 10% of the disputed tax as ordered by this Court today in this order in case if the petitioner fails to deposit the afore said amount respondents are at liberty to pass fresh orders on merits.

Writ Petition is disposed of with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

16.04.2024.

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

Copy To:

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Chepauk, Chennai-5

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C.SARAVANAN, J.

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