BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.25206 of 2023
and
W.M.P.(MD) No.21402 of 2023

P.Sinkaran ... Petitioner

/vs./

1.The Principal Commissioner and Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai 600 005.

2.The Assistant Commissioner (ST),
Kuzhithurai,
Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records on the file of the 2nd respondent pertaining to its proceeding TIN 33366181655/2015-16 dated 25.04.2022 and the consequential proceeding bearing Roc.A3/575/2022 TIN 33366181655/2015-16 dated 11.05.2023 and to quash the same as illegal.

For Petitioner : Mr.SC.Herold Singh

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

ORDER

The petitioner is before this Court challenging the impugned communication dated 25.04.2022. The impugned order reads as under:

"Tvl.P.Sinkaran, Dealer in Works Contract have claimed Input Tax Rs.2,41,897/- and return for the months of April'15 and May'15 not filed but claimed Input Tax of Rs.69,315/- the said claim was noticed by the Audit Officer as incorrect as revealed from the web report. To the above effect a notice was issued to the dealer inviting objections if any on the above proposal. The dealer had filed copy of purchase bills and said bills were not reflected in vendor annexure II. Hence the said ITC value is liable to be rejected and rejected accordingly. As a result, the resultant Tax liability is fixed as under:

Net Tax payable	*: Rs.3,11,212*
Tax paid	*: Nil*
Balance	*: Rs.3,11,212*

For 'O' is issued."

2.The case of the petitioner is that the petitioner was not even served with the notice referred to in Ref.No.1 dated 03.09.2018.

3.It is the further case of the petitioner that the alleged reply referred to in Ref.No.2 dated 08.10.2019 was also not signed by the petitioner, but was signed by somebody unknown to the petitioner. It is therefore submitted that the impugned order is a perverse order and is liable to be quashed.

4.The learned Additional Government Pleader appearing for the respondents on the other hand would submit that the writ petition is liable to be dismissed, as it has been filed on 13.10.2023 long after the service of the impugned order dated 25.04.2022, in view 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*** reported in ***2020 SCC Online SC 440***.

5.That apart, it is submitted that the petitioner also cannot file statutory appeal in the light of the decision of the Hon'ble Supreme Court in ***M/S.Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others*** reported in ***(2008) 3 SCC 70***. Hence, he prays for dismissal of this writ petition.

6.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

7.In my view, the impugned order dated 25.04.2022 is un-sustainable, as it is a non speaking order, content of which has been extracted above.

8.Considering the same, the impugned order is quashed and the case is remitted back to the second respondent for passing a fresh order. The petitioner is directed to file a reply by treating the impugned order, which stands quashed by this Court, as an addendum to the notice dated 03.09.2018 within a period of 30 days from the date of receipt of a copy of this order. The second respondent shall thereafter pass a fresh order on merits and in accordance with law within a period of two months.

9.It is needless to state that the petitioner shall co-operate with the second respondent and the petitioner shall also be heard in the aforesaid proceedings. It is made clear that in case the petitioner fails to co-operate with the second respondent, the second respondent is at liberty to proceed against the petitioner in the manner known to law.

10.The Writ Petitions stand allowed, accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

12.06.2024

Index : Yes / No
Internet : Yes / No
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To

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Chepauk,
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2.The Assistant Commissioner (ST),
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C.SARAVANAN, J.

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