IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-11-2025

CORAM

THE HONOURABLE MR JUSTICE C. SARAVANAN

WP No. 41513 of 2025
AND
WMP NO. 46495 OF 2025

1. Shri Krishna Enterprises
Rep. by its Proprietor,Prajval, No.3/1,
Hosur to Denkanikottai Main Road,
Uliveeranapalli, Krishnagiri 635 114

Petitioner(s)

Vs

1. The Deputy Commissioner Or
Appeals (st)
Combined Commercial Tax Building,
2nd Floor, Pitchards Road,
Hasthampatti, Salem-636 007

2.The Assistant Commissioner State
Hosur South - I Circle, Outer Ring
Road, CT Block, Hosur 635 109

Respondents(s)

PRAYER

calling for the records relating to the order passed in proceedings in GSTIN/33ENPPP8351F1ZL/2023-24 on the file of the 2nd Respondents dated 12.03.2025 quash the same and direct 2nd Respondents to refund the adjusted demand

For Petitioner(s): V Elangovan
S.Mohan Kumar
E.Duraivaiyapuri

For Respondents: Mr. TNC Kaushik
Additional Government Pleader

ORDER

Mr. TNC Kaushik, learned Additional Government Pleader takes notice for the Respondents.

2. This Writ Petition is being disposed of at the time of admission with the consent of the learned counsel for the Petitioner and learned Additional Government Pleader for the Respondents.

3. In this Writ Petition, the Petitioner has challenged the impugned Order in FORM GST DRC-07 dated 12.03.2025 of the Respondents, which was preceded by a Show Cause Notice in GST DRC-01 dated 07.10.2024 for the tax period between April 2023 and March 2024, wherein the Petitioner was also called upon to appear for personal hearing.

4. The Petitioner however did not file any reply to the Show Cause Notice in GST DRC-01 dated 07.10.2024. Thus, the impugned Order has been passed.

5. The learned counsel for the petitioner submits that the petitioner was unaware of the impugned order dated 12.03.2025 and therefore, since the petitioner became aware of the same, the petitioner filed an appeal before the Appellate Authority viz., the first respondent herein on 28.08.2025, which was beyond the condonable period of limitation of 49 days under Section 107 of the respective GST enactments.

6. The learned counsel for the petitioner submits that the delay has to be calculated from the date of actual knowledge and not the date of actual intimation in GST portal and hence, prays for direction to the first respondent to dispose of the appeal on merits.

7. The learned Additional Government Pleader for the Respondents on the other hand would submit that this Writ Petition is devoid of merits and is liable

to be dismissed in the light of the decisions of the Hon'ble Supreme Court in ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others, (2008) 3 SCC 70*** and in ***Commissioner of Customs and Central Excise Vs. Hongo India Private Limited and another, (2009) 5 SCC 791*** and also in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited, 2020 SCC Online SC 440.***

8. That apart, it is submitted that the Petitioner has not substantiated the case with any documents and therefore, on this count also, this Writ Petition is liable to be dismissed.

9. There is no scope for giving a positive direction to the Appellate Authority to entertain the appeal, particularly when the petitioner has not filed a reply to the Show Cause Notice in GST DRC-01 dated 07.10.2024 passed by the second respondent.

10. It appears that the petitioner has also pre-deposited 10% of the disputed tax amount at the time of filing of the appeal. Be that as it may, in

paragraph No.11 of the affidavit filed in support of this petition, the petitioner claims to have paid a sum of Rs.17,35,639/- as against the total tax liability of Rs.24,26,503/-.

11. The allegation against the petitioner is that the petitioner has failed to block credit and therefore, the petitioner is liable to reverse the credit.

12. Considering the fact that the petitioner has already reverse the amount as has been stated above, there shall be a direction to the petitioner to deposit 25% of the disputed tax amount if indeed the aforesaid amount has been paid / recovered from the Petitioner's Electronic Cash Register within a period of thirty (30) days from the date of receipt of a copy of this order.

13. In case, an averment in paragraph No.11 is accepted by the Department, the Department need not insist for further pre-deposit from the petitioner for the purpose of the *denovo* proceedings before the second respondent.

14. Within such time, the Petitioner shall also file a reply to the Show Cause Notice in GST DRC-01 dated 07.10.2024 together with requisite documents to substantiate the case by treating the impugned Order dated 12.03.2025 as an addendum to the Show Cause Notice dated 07.10.2024.

15. Amount which has already recovered from the Petitioner shall be adjusted towards pre-deposit of 25% of the disputed tax as ordered above. This will be however subject to verification by the Respondents.

16. In case the Petitioner complies with the above stipulations, the Respondents shall proceed to pass a final order on merits and in accordance with law as expeditiously as possible, preferably, within a period of three (3) months of such reply/pre-deposit. Subject to the Petitioner complying with the above stipulations, the attachment of the bank account of the Petitioner shall also stand automatically raised/vacated.

17. In case the Petitioner fails to comply with any of the stipulations, the Respondents are at liberty to proceed against the Petitioner to recover the tax in accordance with law as if this Writ Petition was dismissed *in limine* today.

18. Needless to state, before passing any such order, the Respondents shall give due notice to the Petitioner.

19. It is made clear that recovery of 25% of the disputed tax ordered above pertains only to the impugned Order dated 12.03.2025.

20. This Writ Petition stands disposed of with the above observations. No costs. Connected Writ Miscellaneous Petitions are closed.

06-11-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
ab

To

1.The Deputy Commissioner Or
Appeals (st)
Combined Commercial Tax Building,
2nd Floor, Pitchards Road,
Hasthampatti, Salem-636 007

2.The Assistant Commissioner State
Hosur South - I Circle, Outer Ring
Road, CT Block, Hosur 635 109

C.SARAVANAN J.

ab

WP No. 41513 of 2025
AND WMP NO. 46495
OF 2025

06-11-2025