**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 09.01.2025**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

W.P.(MD) No.26619 of 2024
and
W.M.P.(MD) Nos.22583 and 22584 of 2024

Sree Shiva Enterprises,
No.185/1, North Marat Street,
Vakil New Street, Madurai-625 001,
Rep., by Partner Mr.G.Balaji,
No.10/21, Jegajeevaram Veedhi,
Shenoynagar, Alavandan,
Madurai-20. .. Petitioner

Vs.

The Deputy State Tax Officer-I,
O/o.Tamilnadu Commercial Taxes Department,
Tamil Sangam Road Assessment Circle,
Dr.Thangaraj Salai,
Madurai-625 020. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for records on the file of the respondent in impugned assessment order in GST ASMT 13 and GST DRC 07 dated 12.10.2023 vide Reference No. ZA3309231419197 and impugned best of Judgment Order dated 12.10.2023 passed for the Tax Period 2023-2024 for the month of August and quash the same as void ab intio, illegal, arbitrary and violative of principles of natural justice.

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|---|---|---|
| For Petitioner | : | Mr.D.Balamurugapandi |
| For Respondent | : | Mr.R.Suresh Kumar<br>Additional Government Pleader |

**ORDER**

The challenge in the writ petition is to an order of assessment made in original and consequently to reimburse the sum of Rs.56,445/- deducted from the petitioner's account.

2. The petitioner would submit that the petitioner had missed to file its return for the month of August, 2023 and an Order-in-Original was made by the respondent on 12.10.2023. The petitioner had also filed its returns for the month of August 2023 on 18.12.2023. However, a show cause notice dated 18.10.2024 was issued by the Assistant Commissioner calling upon the petitioner as to why his registration

should not be cancelled for non-filing of returns for which he had also made his explanation. He would heavily rely upon the judgment of this Court passed by two learned Judges dated 14.12.2023 and 29.01.2024 made in W.P.No.34770 of 2023 etc., and W.P.No.4122 of 2022 respectively to contend that when the order of original assessment has been made and the returns are filed within the prescribed period, then the Order-in-Original would stand withdrawn.

3. In the present case, he would submit that 120 days is available for filing the return, that is 60 days without penalty and a further 60 days with penalty. In the present case, he would submit that the petitioner has filed his return on 18.12.2023 and therefore, he would submit that the Order-in-Original should be deemed to be withdrawn as per the provisions of Section 62(2) of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "the TNGST Act") and his returns should be dealt with under the said provision.

4. On the contrary, learned Additional Government Pleader appearing on behalf of the respondent would submit that the petitioner could also file an appeal against the order of the respondent before the appellate authority and the same is an efficacious alternative remedy. The claim made by the petitioner need not be traversed to in the present writ petition and hence, would seek dismissal of the writ petition.

5. I have considered the rival submissions made by the learned counsel on either side.

6. It is the admitted case of the petitioner that the petitioner failed to file the returns for the month of August, 2023 within the prescribed time. The respondent invoking the provisions of Section 62 of the TNGST Act had made an assessment in original on 12.10.2023. Sub-Section (2) of Section 62 of the TNGST Act originally permitted the assessee to file a valid return within 30 days and the same came to be amended by Act 8/2023, wherein the period to file a valid return was

made to 60 days. By insertion of a proviso to sub-Section (2) to Section 62, a further period of 60 days on payment of additional late fee of Rs. 100/- of each day of delay beyond the period of 60 days of the service of the said assessment order under sub-Section (1) would also be entertained.

7. In the present case, the petitioner did not file the valid return within the period as prescribed under sub-Section (2) of Section 62, but had filed the return within the period specified under the proviso to sub-Section (2) of Section 62. Therefore, the Order-in-Original is deemed to be withdrawn and the return filed by the petitioner would have to be assessed by the Assessing Officer *viz*., the respondent. In such view of the matter, the order made in original, impugned in this writ petition, is statutorily deemed to be withdrawn, in view of the return filed by the petitioner on 18.12.2023.

8. In fine, this writ petition is disposed of with a direction to the respondent to take on record the valid return filed by the petitioner on

18.12.2023 and levy the penalty as provided under the proviso to sub-Section (2) of Section 62 of the Tamil Nadu Goods and Services Tax Act, 2017 and process the same in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**09.01.2025**

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

The Deputy State Tax Officer-I,
O/o.Tamilnadu Commercial Taxes Department,
Tamil Sangam Road Assessment Circle,
Dr.Thangaraj Salai,
Madurai-625 020.

**K.KUMARESH BABU, J.**

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**W.P.(MD) No.26619 of 2024**

**Dated: 09.01.2025**