



W.P.(MD) No.18740 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.18740 of 2024
and
W.M.P.(MD)Nos.15862 & 15863 of 2024**

Helmet House,
Represented by its Proprietor Kumba Sundram Jeyaram. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Tamil Sangam Circle,
Madurai – 625 020. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records form the file of the respondent in impugned assessment order in GST ASMT-13 and GST DRC 07 dated 23.05.2023 and impugned best of judgment order dated 22.05.2023 passed for the Tax Period 2022-23 for the month of February and quash the same as void ab inito, illegal, arbitrary and violative of principles of natural justice.

For petitioner : Mr.A.Satheesh Murugan
for Mr.K.S.Prakash
For respondent : Mr.J.K.Jayaselan
Government Advocate



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ORDER

The petitioner is before this Court against the following impugned orders:

S.No	Date	Order/Notice
1.	22.05.2023	Best of Judgement Order under Section 62(1) of TNGST Act, 2017
2.	23.05.2023	Form GST ASMT 13
3.	23.05.2023	Form GST DRC 07

2. The petitioner had filed the Returns in GSTR 01 on 25.03.2023 after the petitioner received a notice in GSTR 3A on the same date. In GSTR 01 the petitioner declined the difference in supply, however, the petitioner failed to file GSTR 3B in time. Therefore, based on the Returns filed by the petitioner in GSTR 01 on 25.03.2023, assessment order was passed under Section 62(1) of the TNGST Act, 2017 on 22.05.2023.

3. It is submitted that the petitioner has thereafter filed the Returns in GSTR 3B on 02.07.2023. As per the scheme in Section 62 of the respective GST enactments, such Return can be filed within a period of 30 days, in which case, the assessment order passed under Section 62 shall be deemed to have been



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withdrawn, but, the liability for payment of interest under Sub-Section 1 of Section 50 or the payment of late fee under Section 47 would continue.

4. The learned counsel for the petitioner would submit that with effect from 01.10.2023, the period was also extended, wherein, it has been extended to 60 days in terms of Finance Act No.8/2023 dated 31.03.2023 with effect from 01.10.2023 *vide* Notification No.28/2023-Central Tax dated 31.07.2023.

5. The learned Government Advocate for the respondent, on the other hand, would submit that during the period in dispute, the above amendment was not in force and therefore, retrospective benefit cannot be given to the petitioner.

6. That apart, it is submitted that the petitioner has slept over its rights by non filing of an Appeal in time and therefore, this Writ Petition is liable to be dismissed in view of the decision rendered by the Hon'ble Supreme Court in the case of *Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur and others* reported in (2008) 3 SCC 70.



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7. Having considered the learned counsel for the petitioner and learned Government Advocate for the respondent and in the light of the amendment to Section 62(2) of the CGST Act, 2017, which amendment has also been carried out in the TNGST Act, 2017, the Court is inclined to conclude that the delay in filing the GSTR 3B Return on 02.07.2023 is liable to be condoned as a consequence of which the impugned assessment order passed under Section 62(1) dated 22.05.2023 is to be deemed to have been withdrawn.

8. Needless to state, this exercise shall be carried on without prejudice to the rights of the revenue to recover the tax due, if there is any shortage to the interest payable by the petitioner and late fee payable under Section 47 of the respective GST enactments.

This Writ Petition stands allowed with above directions. No costs.
Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
apd

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To
The Deputy State Tax Officer-1,
Tamil Sangam Circle,
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C.SARAVANAN, J.

apd

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