

W.P.(MD).No.18419 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.08.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD).No.18419 of 2024

and

W.M.P(MD)No.15670 of 2024

Tv.Sornam Medicals,  
Represented by its proprietor P.Manivannan.

... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,  
O/o the Principal and Special Commissioner  
of Commercial Taxes,  
Ezhilagam, Chepauk,  
Chennai-600 005.

2.The Deputy State Tax Officer-2,  
Nilakottai Town Assessment Circle,  
Commercial Tax Office,  
Nilakottai,  
Dindigul-624 208.

... Respondents

**Prayer** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to impugned order of the 2<sup>nd</sup> respondent in Reference No. 33AXWPM1209N1Z1/2017-18, dated 31.12.2023 and quash the same



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For Petitioner : Mr.B.Rooban

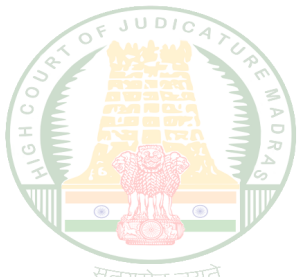
For Respondents : Mr.R.Suresh Kumar  
Additional Government Pleader

### **ORDER**

In this writ petition, the petitioner has challenged the impugned order passed by the 2<sup>nd</sup> respondent for the assessment year 2017-18, dated 31.12.2023.

2. The petitioner has failed to respond to the notices issued to the petitioner both in DRC 01A dated 23.09.2023 and in DRC 01, dated 29.09.2023. The petitioner has also failed to take advantage of the personal hearing notice dated 09.11.2023.

3. The learned counsel for the petitioner would submit that the petitioner had also failed to respond to the notice. It is evident that the impugned order has been passed without giving 3 opportunities as contemplated under Section 75(5) of the respective GST enactment. That apart, the learned counsel for the petitioner submitted that the petitioner had filed regular returns upto the month



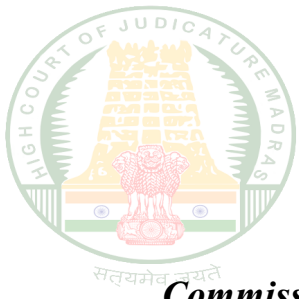
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of November 2017. Thereafter, the petitioner opted for composite scheme under Section 10 of the respective GST enactment.

4. It is submitted that the department has arrived at a difference in the turn over based on the information generated in GSTR-2A without realising that the petitioner was not availing input tax credit after the petitioner opted to pay tax under Section 10 of the respective GST enactment. That apart, it is submitted that from October 2017, the petitioner had also stopped availing input tax credit and therefore, the petitioner has been visited with an unjust demand. Hence, he prayed for one opportunity for explaining the case afresh. It is submitted that the petitioner in all likelihood would succeed, if an opportunity is given. The learned counsel for the petitioner submits that the petitioner may be subjected to any reasonable term to secure the interest of the revenue.

5. The above submission is opposed by the learned Government Advocate for the respondent, on the ground that the Writ Petition is hopelessly time barred and therefore, liable to be dismissed, on account of laches, in the light of the decision of the Hon'ble Supreme Court in the case of *Assistant*



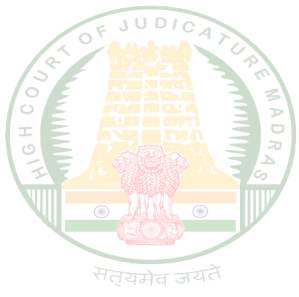
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**Commissioner (CT) LTU, Kakinada and others vs. Glaxo Smith Kline Consumer Health Care Limited** reported in **2020 SCC Online SC 440**.

6. It is submitted that the appellate remedy is also time barred in terms of limitation under Section 107 of the respective GST Enactments as held 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** and submitted that this Writ Petition is liable to be dismissed.

7. Having considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, the petitioner can be given an opportunity to ventilate his grievance before the respondents on terms. Therefore, the petitioner shall deposit 25% disputed tax confirmed by the impugned order from Electronic Cash Ledger within a period of thirty (30) days from the date of receipt of copy of this order. The impugned order, dated 31.12.2023 passed by the 2<sup>nd</sup> respondent is quashed and the case is remitted back to the 2<sup>nd</sup> respondent to pass a fresh order on merits. The impugned order which stands quashed shall be treated as Addendum to the Show Cause Notice in DRC 01A dated 23.09.2023 and in DRC 01, dated 29.09.2023



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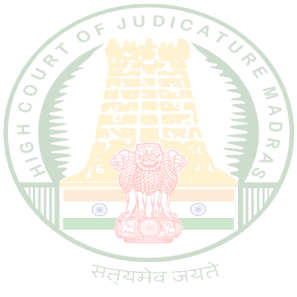
8. The petitioner shall file a consolidated reply within a period of 30 days from the date of receipt of copy of this order. The respondent shall thereafter proceed to pass a final order on merits and in accordance with law, as expeditiously as possible, preferably, within a period of two (2) months from the date of reply to be filed by the petitioner. It is made clear that in case the petitioner fails to either file a reply or deposit the amount as directed above, the respondents are at liberty to proceed against the petitioner, as if this writ petition had been dismissed today *in limine*. It is needless to state, the petitioner shall be heard before passing the final order.

9. In view of the above terms, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**02.08.2024**

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

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To

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O/o the Principal and Special Commissioner  
of Commercial Taxes,  
Ezhilagam, Chepauk,  
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- 2.The Deputy State Tax Officer-2,  
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**C.SARAVANAN, J.**

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