IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2023

CORAM :

The HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.9051 of 2023
and
W.M.P.No.9181 of 2023

Startech Offshore Services
Rep. By Proprietor
Rajesh Kumar, S/o.Ravindhar Nair,
No.38/79, Ground Floor,
Ahamed, Angappan Naicken Street,
Chennai – 600 001. .. Petitioner

vs

1.The Appellate Authority
The Joint Commissioner of GST & Central Excise,
Appeals – I, Nungambakkam,
Chennai – 600 034.

2.The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records from the 1st respondent and quash the impugned order of the 1st respondent dated 07.12.2022 in Order-in-appeal No.329 – 331/ 2022 (GSTA – I) (JC).

For Petitioner	:	Mr.S.Sundar
For Respondents	:	Mr.T.Rameshkutty Sr.Standing Counsel (GST)

ORDER

Challenging the order of the first respondent dated 07.12.2022 in Order-in-appeal No.329 – 331/ 2022 (GSTA – I) (JC), the petitioner has filed this writ petition.

2. The case of the petitioner is that they are running a small scale proprietorship services based business and their GST Registration number is 33AHVPR9032R1Z9. Due to non-filing of GST returns for the period from July 2022 to September 2022, the petitioner's GST registration was cancelled by the Department suo motu vide order dated 27.06.2022. Against which, the petitioner preferred an appeal before the first respondent through online dated 20.10.2022. Thereafter, the petitioner made a representation dated 24.11.2022 to the Deputy Commissioner, GST and Central Excise, Egmore, Chennai seeking revocation of GST registration cancellation. However, the first respondent dismissed the appeal as time barred vide order dated 07.12.2022. Hence the present writ petition.

3. Heard learned counsel for the parties.

4. Learned counsel for the petitioner would submit that as against the cancellation of registration, the petitioner has remedy of appeal before the appellate authority within 90 days with further cap period extended upto 120 days under the provisions of the CGST Act,2017. Thus, learned counsel submitted that by exercising powers under Article 226 of the Constitution, this Court can grant relief to the petitioner.

5. Learned Standing Counsel for the respondents submits that under the procedure established, due opportunity was granted to the petitioner and would vehemently oppose for granting any relief to the petitioner. Learned Standing Counsel further submits that the case of the petitioner is even barred by limitation. Hence learned Standing Counsel prays for dismissal of this petition.

6. This Court heard the learned counsel on either side and perused the materials available on record.

7. From the materials available on record, it transpires that as against the cancellation of GST registration dated 27.6.2022, the petitioner preferred appeal before the first respondent through online dated 20.10.2022 and thereafter,

representation was submitted before the Deputy Commissioner, GST & Central Excise. However, the said appeal before the first respondent was rejected on the ground of delay.

8. It is to be pointed out that delay cannot be cited to be a reason for rejecting the appeal and the reasons submitted by the petitioner has to be looked into before deciding the issue on the question of delay. There could be several reasons, which are bona fide, which would have precluded the petitioner from filing the appeal on time. The appellate authority to record his reasons for not being satisfied with the reasons filed in support of condonation of delay and has to pass on merits. Citing delay cannot be a ground to dismiss the appeal on the ground of delay without looking into the attendant reasoning.

9. In such view of the matter, this Court, without going into merits of the matter any further, the impugned order dated 07.12.2022 is set aside and the matter is remitted to the first respondent for passing appropriate orders, after hearing the petitioner, on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

10. In view of above, writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.03.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

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Chennai – 600 034.

2.The Commissioner of GST & Central Excise,
Chennai North Commissionerate,
Chennai.

M.DHANDAPANI,J.

ssm

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