IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.13956 of 2023
and WMP Nos.13603 & 13060 of 2023

M/s R.K.Metal
Represented by its Proprietor Kasim Ansar,
No 1/1, 15th street, Padi Pudhu Nagar,
Anna Nagar (West)
Chennai – 600 101

... Petitioner

Vs

1.Deputy Commissioner (SA) (FTC)
GST-APPEAL, Chennai – II,
C.T.Annexe Building, 30 Floor,
No.1, Greams Road, Chennai – 600 006.

2.The State Tax Officer,
Koyembedu Assessment Circle,
Chennai.

3.Senior Intelligence Officer,
Directorate General of GST Intelligence (DGGI)
No.1, Greams Road, Chennai – 600 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Writ petitioner on the file of the 1st respondent to quash the impugned order dated 31.10.2022 and consequently direct the 2nd respondent to provide reasonable/sufficient opportunity of hearing.

For Petitioner	: Mr.M.Velmurugan
For Respondents	: Mr.V.Prashanth Kiran (for R1 & R2) Government Advocate Mr. Rajnish Pathiyil (for R3) Senior Panel Counsel

O R D E R

Read this order in conjunction with and in continuation of orders dated 01.06.2023 and 02.06.2023, that read as follows:

Order dated 01.06.2023.

Though Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the respondents, this Court is unconvinced of the prima facie case made out even for admission, seeing as the challenge is to an order of the appellate authority rejecting the appeal of the petitioner for delay beyond the condonable period (2 months and 12 days beyond the condonable period).

2. That apart, the impugned order is itself dated 31.10.2022, whereas, this Writ Petition has been instituted only on 26.04.2023, also hit by laches.

3. Seeing as the petitioner has stated on affidavit that various documents required for filing of appeal had been seized by the *respondents that were not returned despite a request dated 11.04.2022, let a copy of the same be produced by the learned counsel for the petitioner on 02.06.2023 after serving the same in advance upon the learned Government Advocate.*

4. List on 02.06.2023 at the end of admission.

Order dated 02.06.2023:

Notice through Court as well as privately to R3, Central GST authority, returnable 16.06.2023. Private notice to the panel counsel for R3 is also permitted.

2. The petitioner has filed a compilation dated 02.06.2023 containing Form GST INS -02 dated 17.11.2020 to evidence seizure of documents and request letter dated 11.04.2022 addressed to R3 seeking copies of the same.

3. Let this compilation be served upon the panel counsel for R3 as well.

4. List on 16.06.2023 at the end of admission list. Counter/written instructions by then with an advance copy served upon the petitioner.

2. Mr.Rajnish Pathiyil, learned Senior Panel Counsel for R3 states that the petitioner has, indeed, filed request dated 11.04.2022 seeking

copies of documents that were seized on 17.11.2020. He submits that investigation by R3 is on-going and will be completed in due course.

3. The submissions of Mr.Prashanth Kiran, learned Government Advocate for R1 and R2 is to the effect that in response to pre-assessment notice, prior to passing of assessment order dated 23.07.2021, the petitioner has filed a response on 25.09.2020 to the effect that the necessary documents were with the Auditor and the seizure by R3 was only on 17.11.2020 and hence nothing prevented the petitioner from supplying the documents to the officer, as a period of nearly 2 months was available between September and November 2020. This has, admittedly, not been done.

4. Be that as it may, according to the petitioner, it is the seizure of the documents by R3 on 17.11.2020 that has stood in the way of preparion and filing of an appeal challenging order dated 23.07.2021. This submission is misconceived.

5. It is evident, and the filing of appeal online on 06.08.2022, belatedly, would stand testimony to the position that, in fact, the petitioner did not need the seized documents at all and that the reason trotted out, that it was the unavailability of the documents that delayed the filing of appeal, is nothing but an after thought. That position is

clearly established by virtue of the fact that the petitioner has, in fact, filed the apeal.

6. Hence, in the interests of substantial justice, since the appeal has been filed with a short delay of less than 2 months and bearing in mind the trajectory of events that have taken place in the interregnum, the delay in filing of the appeal stands condoned and impugned order dated 31.10.2022 stands set aside.

7. The petitioner will appear before R3 on Friday, the 23rd June, 2023 at 10.30 p.m. without expecting any further notice in this regard with a requisition setting out the details of documents sought for by it.

8. Upon payment of necessary charges, R3 is directed to hand over the copies of seized documents to the petitioner on the same day. If the petitioner does not appear on that day, the benefit granted under this order shall stand withdrawn without further reference to the petitioner.

9. The petitioner is, in light of the setting aside of order dated 31.10.2022, permitted to re-present the appeal papers within a period of one (1) week from today. If the appeal papers are so re-presented, the appellate authority shall entertain the same holding them be maintainable, hear the appeal and dispose the same in accordance with law.

10. This Writ Petition is disposed as above. No costs. Connected Miscellaneous Petitions are closed.

11. Feeling generous, the petitioner wishes to remit a sum of Rs.50,000/- (Rupees fifty thousand only) to the Cancer Institute, Adayar, Chennai within a period of four (4) weeks from today and will do so. Proof of remittance be filed with the Registry.

16.06.2023

Index : Yes / No
Speaking/non-speaking Order
Neutral citation:Yes/No
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Note: Registry is directed to issue this order on or before 22.06.2023.

To

1.Deputy Commissioner (SA) (FTC)
GST-APPEAL, Chennai – II,
C.T.Annexe Building, 30 Floor,
No.1, Greams Road, Chennai – 600 006.

2.The State Tax Officer,
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Dr.ANITA SUMANTH,J.

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