IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.06.2023

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.19103 of 2023
and WMP.Nos.18355, 18356 and 18359 of 2023

Shree Agencies
Represented by its Proprietor
R.Vishal Jhamad
No.17/21, Ayya Mudali Street,
Sowcarpet, Chennai – 600 079. ... Petitioner

Vs

1.Assistant Commissioner (ST)
Peddunaickenpet Assessment Circle,
Integrated Commercial Taxes Building,
No.32 Elephant Gate Road,
Chennai – 600 003.

2. Kotak Mahindra Bank Limited
represented by its Branch Manager,
First Floor, Door No.280,
Old No.377, Mint Street, Sowcarpet,
Chennai – 600 079. ... 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 impugned proceedings of the first respondent passed in GSTN:33AJTPJ7001J1Z5/2019-20 dated 23.01.2023 and quash the same further direct the first respondent to re-do the assessment in accordance with law after granting opportunity of personal hearing and quash the same.

For Petitioner : Mr.N.Murali
For Respondents : Mr.V.Prashanth Kiran
Government Advocate - R1

O R D E R

Mr.V.Prashanth Kiran, learned Government Advocate accepts notice for the first respondent and is armed with instructions to enable a final disposal of this Writ Petition even at the stage of admission. In light of the order that is proposed to be passed, no notice is thought necessary to R2 at this juncture.

2. The challenge is to an order of assessment dated 23.01.2023 passed for the assessment year 2019-2020 under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'Act').

3. Admittedly, no statutory appeal has been filed as against the assessment order and the short relief sought is that the petitioner may be permitted to challenge the impugned order by way of statutory appeal.

4. The reason for approaching this Court by way of Writ Petition is that as on date of institution of the Writ Petition, being 26.06.2023, the appeal was time barred by a little over one month from the last date provided under the Statute for condonation of delay.

5. The petitioner has, in paragraph 10 of the affidavit, explained the delay in the following terms:

> *'10. I submit that I handed over the adjudication orders passed for the years 2017-2018 to 2019-2020 implementing the GST Audit proposal to my Chartered Accountant Mr.P.Dilip Kumar for the purpose of further course of action. The Chartered Accountant*

> *accordingly filed rectification petitions for the year 2017-2018 and 2018-2019 and got the rectified order for those years being dt.02.03.2023 for the year 2017-2018 dt.01.03.2023 for the year 2018-2019. However, the Chartered Accountant neither filed the rectificatin petition nor filed any appeal for the year 2019-2020. It is only after the recovery of money through garnishee proceedings, I contacted the chartered accountant and their upon only I came to know that no steps were taken the year 2019-2020 by the Chartered Accountant. I submit since the bank account is under attachment I could not able to make the payment of 10% of the pre-deposit of tax even for the years 2017-2018 & 2018-2019 for the purpose of filing appeal before the appellate authority. Apart from the above, my day to day activities both personally as well as commercially was affected due to attachment of the bank account. I submit unless otherwise, the attachment of bank account is lifted, I could not file appeals even for the years 2017-2018 & 2018-2019. Therefore, it is prayed that this Hon'ble Court may release my bank attachment at least to make the payment of 10% of pre-deposit of tax for the year 2017-2018 & 2018-2019.'*

6. Mr.Prashanth, on a perusal of the writ affidavit, does not very seriously object to the suggestion of the Court that the delay may be condoned in light of the explanation set out in paragraph 10, extracted above. He has also no objection to the appellate authority being directed to consider the matter on merits.

7. Hence, having regard to the explanation set out and the fact that no serious objection is placed in this regard by the learned Government Advocate, while sustaining the impugned order of assessment, liberty is granted to the

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petitioner to challenge the same by way of statutory appeal before the first appellate authority.

8. Appeal, if any, filed by the petitioner before the first appellate authority within a period of one (1) week from date of receipt of a copy of this order, the same shall be taken on file by the first appellate authority without reference to limitation, but ensuring compliance with all other statutory conditions, including pre-deposit and disposed expeditiously in accorance with law.

9. This Writ Petition is dismissed with liberty. No costs. Connected Miscellaneous Petitions are closed.

27.06.2023

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 30.06.2023.

To
Assistant Commissioner (ST)
Peddunaickenpet Assessment Circle,
Integrated Commercial Taxes Building,
No.32 Elephant Gate Road, Chennai – 600 003.

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