IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.20626 of 2023

Nalla Mohammed Hameedabanu,
Proprietor of Rahmaan Textiles Readymades,
39, Station Road, Radhanagar,
Chrompet, Chennai - 600 044. ... Petitioner

Vs.

The Appellate Deputy Commissioner (ST),
GST Appeals, Chennai. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondent to accept the physical copy of the appeal and condone the delay and consequently pass orders in the appeal on merits in accordance with law.

For Petitioner : Mr.S.Sathyanarayanan

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

Mrs.K.Vasanthamala, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has filed this writ petition for a direction to the respondent to accept the physical copy of the appeal and to condone the delay and consequently, to pass appropriate orders in the appeal on merits and in accordance with law.

3. The petitioner appears to have suffered an order under Section 73 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017, on 27.02.2023, which was communicated to the petitioner on the same day through internet.

4. The petitioner ought to have filed an appeal within 90 days in accordance with law under Section 107 of the respective GST enactments. The last date for filing an appeal would have expired on 26.05.2023. The petitioner had a grace period of another 30 days to file an appeal along with the application to condone the delay.

5. Thus, the last date for filing an application to condone the delay would have expired on 26.06.2023. However, the petitioner filed an appeal belatedly on 03.07.2023 in the portal. When the petitioner wanted to file the manual copy of the appeal as is required, the Office of the Appellate Commissioner has declined to accept the same stating that the petitioner has filed the appeal beyond the condonable period prescribed under Section 107 of the respective GST enactments.

6. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in **ITC Limited** Vs. **Union of India**, 1998 (101) E.L.T.9 (S.C.).

7. The learned Government Advocate for the respondent submits that the writ petition is without any merits and is therefore liable to be dismissed as the powers of Court under Article 226 cannot be exercised inderogation of the provisions the respective GST enactments.

8. The learned Government Advocate for the respondent would rely on the several decisions of this Court rendered in the context of Customs and Excise Act, 1998. Hence, prays for dismissal of the writ petition.

9. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

10. The petitioner appears to be a small-time trader, who has committed defaults in filing the returns and thereafter, has suffered the Assessment Order on 27.02.2023.

11. The appeal that was filed by the petitioner on 03.07.2023 was beyond the condonable period of thirty days, after the expiry of the first 90 days on 26.06.2023. The Officers acting under the provisions of the GST Acts cannot entertain the appeal beyond the period of limitation and therefore, they have rightly rejected the same.

12. Considering the fact that the petitioner is a small-time trader, who wishes to challenge the order passed on 27.02.2023 by the respondent. The Court is therefore inclined to allow this writ petition by directing the respondent to number the appeal subject to the petitioner depositing a sum of Rs.50,000/- over and above, the amount already deposited by the petitioner towards pre-deposit.

13. On such payment of the aforesaid amount, the delay of 40 days in filing the appeal shall stand condoned. The Appellate Commissioner shall dispose the appeal on merits.

14. This Writ Petition stands allowed with the above observations. No costs.

12.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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C.SARAVANAN, J.

arb

To

The Appellate Deputy Commissioner (ST),
GST Appeals, Chennai.

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