IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.21925 of 2023

M/s.Rane Madras Ltd.,
Rep by S.Narayanan
No.77, Thirubhuvanai Main Road,
Pallineliyanur, Puducherry-605 107. ... Petitioner

Vs.

1. The Assistant Commercial Tax Officer (Appeals)
III Floor, CT Complex, 100 Feet Road,
Ellapillaichavady, Pondicherry-605 005.

2. The Commissioner,
Commercial Taxes Department,
First Floor, 100 Feet Road,
Ellapillaichavady,
Pondicherry-605 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent and to quash the impugned communication bearing RC.No.29/APRR/2023-24/AC (APPEAL) dated 16.06.2023 refusing to condone the delay and rejecting the appeal filed manually and/ or direct the first respondent to accept the appeal manually filed by the petitioner against the order bearing No.34AACCR977M1ZQ/TRAN 1/2023 dated 28.02.2023 and to decide the appeal on merits.

For Petitioner : Mr.M.Karthikeyan

For Respondents : Mr.V.Vasantha Kumar
Additional Government Pleader (Puducherry)

ORDER

The petitioner filed this writ petition to quash the impugned order-cum group communication dated 16.06.2023 bearing RC.No.29/APRR/2023-2024/AC (APPEAL) rejecting the appeal filed by the petitioner on the ground that as per Rule 108(1) of PGST Rules, 2017.

2. The impugned communication dated 16.06.2023 reads as under:

As per Rule 108(1) of PGST Rules, 2017, the appellant shall file an appeal electronically before the appellant authority in FORM GST APL-01. Moreover, as per Section 107(1) PGST Act, 2017 any person aggrieved by any decision or order passed under this Act by an adjudicating authority may appeal to such Appellant authority within three months from the date on which the said decision or order is communicated to such person. Further, the reason adduced by the appellant that he has tried through GST portal within the due date however, there was no facility available in the online GST portal to file an appeal against the TRAN-1 rejection order is not correct. It is stated that as and when PGST enacted in the UT of Puducherry all the aggrieved person against the order of the proper officer filed an appeal only through electronically including TRAN-1 cases.

Further, the contention of the appellant that the State tax authorities had rejected to accept the manual filing of an appeal is also denied. However, the appellant has filed the appeal manually after expiry of three months without any valid justification for the delay condoned for filing an appeal as per Section 107(1) of the PGST Act, 2017. Hence, the appeal filed by the appellant cannot be entertained as per provisions of PGST Act, 2017".

3. The petitioner had suffered an adverse order in the hands of the second respondent on 28.02.2023 in the hands of the Commercial Tax Officer, Goods Division III. Aggrieved by the same, the petitioner attempted to file the appeal electronically as is required under Rule 108 of GST Rules. However, the petitioner was unable to upload the appeal due to technical glitch. Therefore, the petitioner attempted to file appeal for the second time. The petitioner was however unable to file the appeal. Therefore, the petitioner sent a complaint on the portal on 31.05.2023. The complaint was responded on 13.06.2023 wherein, it has been stated as follows:

Resolution: Dear Taxpayer, Currently, the TRAN 1/2 orders are not enabled for Appeal in GST Portal. This issue has been already taken up with GST Policy Wing. For the issue of filing appeal against TRAN 1/2 order, the tax payer may be asked to wait for further instructions from the Government or CBIC.

For further assistance, please feel free to contact us at GST helpdesk number 1800-103-4786 or visit Grievance Redressal Portal https://selfservice.gstsystem.in/to log a ticket.

> *Inconvenience cause is regretted.*
> *The Survey takes just two minutes to complete and your feedback will be of great help to us in the work to improve our service.*
> *Please Click on below mention link to start Survey:*

https://selfservice.gstsystem.in/SurveyFormN.aspx?SurveyID=L2&uniqueID=11128348

4. Therefore, the petitioner filed an appeal manually before the 1st respondent on 12.06.2023, which has been now rejected by the second respondent vide impugned communication. The delay in filing the appeal manually in absence of the proper instruction/guidelines and /or facility in the GST portal or a prior clarification cannot be a reason for rejecting the appeal filed by the petitioner particularly in the light of the fact that the petitioner and attempted to file the appeal earlier in time although successfully.

5. Meanwhile, the Government has itself issued Notification No.29/2023-Central Tax dated 31.07.2023 bearing Reference S.O.3423(E)-

> *In exercise of the powers conferred by Section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies the following special procedure to be followed by the registered person or an officer*

referred to in sub-section (2) of Section 107 of the said Act who intends to file an appeal against the order passed by the proper officer under Section 73 or 74 of the said Act in accordance with Circular No.182/14/2022-GST, dated 10th of November, 2022 pursuant to the directions of the Hon'ble Supreme Court in the case of Union of India V/s.Filco Trade Centre Pvt Ltd., SLP(C) No.32709-32710/2018.=2022 (7)TMI 1232-SC ORDER

" 2. An appeal against the order shall be made in duplicate in the Form appended to this notification at Annexure-1 and shall be presented manually before the Appellate Authority within the time specified in sub-section(1) of Section 107 or Sub-Section (2) of Section 107 of the said Act, as the case may be, and such time shall be computed from the date of issuance of this notification or the date of the said order, whichever is later:

Provided that any appeal against the order filed in accordance with the provisions of Section 107 of the said Act with the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification".

3. The appellant shall not be required to deposit any amount as referred to in sub-section (6) of Section 107 of the said Act as a pre-condition for filing an appeal against the said order.

4. An appeal filed under this notification shall be accompanied by relevant documents including a self-certified copy of the order and such appeal and relevant documents shall be signed by the person specified in sub-rule (2) of rule 26 of Central Goods and Services Tax Rules,2017.

5. Upon receipt of the appeal which fulfills all the *requirements as provided in this notification, an acknowledgment, indicating the appeal number, shall be treated as filed only when the aforesaid acknowledgment is issued.*

6. The appellate Authority shall, along with its order, issue a summary of the order, issue a summary of the order in the Form appended to this notification as Annexure-2.

6.The appeal that was filed by the petitioner manually on 12.06.2023 already complies with the requirements of the above notification barring the delay in filing the appeal in time as per Section 107 of the respective Goods and Service Tax Act, 2017. Since the above clarification was issued for the first time only on 31.07.2023, the appeal filed by the petitioner prior to its issuance on 12.06.2023 has to be construed to have been filed in time. Therefore, the impugned order/communication of the 1st respondent is liable to be quashed. It is accordingly quashed.

7. The second respondent is therefore directed to number the appeal filed by the petitioner on 12.06.2023 and dispose the same on merits and in accordance with law on its turn. Needless to state, the petitioner shall be heard before the said appeal is disposed of on merits.

8. This Writ petition stands allowed with the above observation. No costs.

02.08.2023

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

Vv

To

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C.SARAVANAN, J.
Vv

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