IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27496 of 2023
and
W.M.P.Nos.26942 & 26943 of 2023

M/s.Bharat Enterprises,
Represented by its Partner Mrs.D.Suguna,
No.216, Women's Industrial Park,
SIDCO Kattur, Thirumullaivoyal,
Chennai – 600 062. ... Petitioner

Vs

1. The Deputy Commissioner (ST),
GST Appeal, Chennai – I,
C.T. Annex building, 3rd floor,
No.1, Greams Road, Chennai – 600 006.

2. The Assistant Commissioner (ST),
Velacherry Assessment Circle,
Integrated Commercial Taxes
Office Complex (South Tower),
Government Farm Village,
Nandanam, Chennai – 600 035.

3. The Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
Integrated Commercial Taxes Office Complex,
I Floor, Survey No. 1275/3,
Elephant Gate Bridge Road,
Chennai, Tamil Nadu – 600 003. ... 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 impugned proceedings of the first respondent passed in RC No.356/2023/A1 dated 19.04.2023 and quash the same further direct the first respondent to admit and re-hear the appeal after granting opportunity of personal hearing.

For Petitioner	:	Mr.S.Ramamurthy for Mr.N.Murali
For Respondents	:	Mrs.K.Vasanthamala Government Advocate

ORDER

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

2.The petitioner has challenged the impugned order dated 19.04.2023 passed by the first respondent. By the impugned order, the first respondent has dismissed the appeal filed by the petitioner against the order dated 12.04.2023 on the ground of limitation. Operative portion of the impugned order reads as under:-

> "(iv)In the appellant's case, the demand order has been communicated to the appellants on 02.04.2022 through online. In normal circumstances the appellants had time till 01.07.2022 to file appeal against the order of cancellation before this forum. Further, as per section 107(4) of the TNGST Act, 2017, the appellant also had one month time for sufficient cause from non-presenting the appeal within the period of three months as per section 107(1) of the TNGST Act 2017. Such time of further one month also expired on 01.08.2022.
>
> (v)The appellant has failed to appeal before this forum only on 12.04.2023 by a further delay of 7 month and 11 days. In view of the above reasons, the appeal petition filed by you could not be entertained and therefore, returned."

3.The appeal was filed by the petitioner with a delay of 7 months and 11 days i.e., on 12.04.2023. The impugned order passed by the first respondent dismissing the appeal of the petitioner cannot be faulted. As an officer acting under the provisions of the GST, the first respondent has to strictly apply the provisions of the Act.

4.Although, the petitioner has taken a stand that the order passed by the second respondent was without jurisdiction and that the petitioner came to know about the order dated 02.04.2023, the fact remains that the petitioner has pre-deposited 10% of the disputed tax along with the appeal that was filed belated before the first respondent on 12.04.2023. The petitioner came to know about the impugned order passed by the second respondent on 02.04.2022 only on 23.01.2023. After the third respondent dropped the proceedings initiated for the period between April 2018-March 2019. The reasons given by the petitioner in the affidavit read as under:

> "(9) I state that the petitioner received a communication dated 23.01.2023 from the third respondent (Assistant Commissioner (ST) Thirumullaivoyal), titled as an order for dropping the proceedings under Section 73/74, which stated that for the period from April 2018 to March 2019, since DRC-07 summary of order had already been issued dated 02.04.2022 (a copy of which was enclosed), the proceedings before the second respondent were dropped (Velacherry Assessment Circle). The enclosed DRC-07 issued by the third respondent with the date 02.04.2022, stated that an order had been passed for the FY 2018-2019 with the reference 22010222059495 dated 02.04.2022; that the demand had been created under Section 73 of the GST Act, 2017, and that the demand was for an amount of Rs.10,00,415 each under the CGST Act, 2017, and the TNGST Act, 2017 [totalling a sum of Rs.20,00,688].
>
> (10) I state that on examination of the common portal of the petitioner to verify if an order had been passed as mentioned in the DRC-07 summary dated 02.04.2022 issued by the third respondent (Asst.Commissioner (ST) Thirumullaivoyal), it was found

> that the second respondent (Asst.Commissioner (ST) Velacherry) had passed the impugned order dated 02.04.2022 confirming the proposals in the show-cause notice dated 01.02.2022.”

5.Being satisfied with the reasons stated in the affidavit, Court is inclined to dispose the writ petition by directing the first respondent to dispose of the petitioner's appeal on merits and in accordance with law without reference to the limitation, subject to the petitioner depositing another 10% of the disputed tax within a period of 30 days from the dated of receipt of a copy of this order. Subject to such compliance, the impugned order passed by the first respondent on 19.04.2023 stands quashed.

6.This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

20.09.2023

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

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C.SARAVANAN, J.

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