



W.P.No.34751 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.34751 of 2023
and
W.M.P.No34721 & 34722 of 2023

M/s.Cholaa Tapes,
Rep by its Partner,
Mrs.Muthukumar Nandhini,
15, Mullai Nagar,
Kasipalayam Road,
Nallur, Tirupur 641 606.

... Petitioner

Vs.

- 1.The Deputy Commissioner of GST & Central Excise,
Tirupur Division,
2nd Floor, 51 Elementary School Street,
Kumar Nagar, Tirupur 641 603.
- 2.The Additional Commissioner (Appeals),
Office of the Commissioner of GST & Central Excise (Appeals),
Coimbatore,
6/7, A.T.D. Street,
Race Course Road,
Coimbatore 641 018.



W.P.No.34751 of 2023

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3.The Assistant Commissioner (ST) (FAC),
Rural I Assessment Circle,
Tiruppur I

4.The Branch Manager,
Canara Bank,
Tiruppur Branch, Tiruppur.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the first respondent in C.No.IV/16/3/2021-GST RFD (Order Sl.No.02/2021-DC TPR (GST RFD) dated 20.07.2021 and the summary of the order in Form GST DRC 07 dated 16.06.2023 issued in Ref No.ZD33062200091322 and the subsequent impugned order passed by the second respondent in Appeal No.146/2022-GST (CBE) in DIN: 20230959KV000082398F (Order in appeal No.55/2023-GST) dated 21.09.2023 and quash the orders as passed contrary to the provisions of the CGST Act and principles of natural justice.

For Petitioner : Mr.Rajkumar P

For Respondent : Mr.T.Ramesh Kutty,
Senior Panel Counsel for R1 and R2

Ms.K.Vasanthamala,
Government Advocate for R3



W.P.No.34751 of 2023

ORDER

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This writ petition has been filed challenging the impugned proceedings dated 20.07.2021 and summary of order dated 16.06.2023 and also the subsequent impugned order dated 21.09.2023.

2. Mr.T.Ramesh Kutty, learned Senior Panel counsel, takes notice on behalf of the respondents 1 and 2 and Ms.K.Vasanthamala, learned Government Advocate, takes notice on behalf of the 3rd respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The case of the petitioner is that the impugned order dated 21.09.2023 has been passed by the 2nd respondent rejecting the appeal filed by the petitioner on the ground that there was a delay of 158 days in filing the said appeal.

4. The learned counsel for the petitioner would submit that the petitioner was supposed to have filed the appeal within a period of 90



W.P.No.34751 of 2023

days from the date of passing of the original order dated 20.07.2021 and if there is any delay, the Appellate Authority can condone the delay up to a period of 30 days, even after the expiry of the aforesaid 90 days.

5. He would further submit that in the present case, the summary order was passed on 16.06.2022 and accordingly, the aforesaid period of 90 days was expired on 30.09.2022. Further, if sufficient reasons were provided by the petitioner for non-filing of appeal within the prescribed time limit, an additional period of 30 days time will be available to them and in such case, the time for filing the appeal was available for the petitioner up to 13.10.2022. However, the appeal was filed by the petitioner with a delay of 22 days on 04.11.2022 and the said appeal was dismissed vide impugned order dated 21.09.2023 by the 2nd respondent. Hence, the present writ petition.

6. On the other hand, the learned counsel for the respondent would submit that the appeal was not filed with the delay of 22 days, but it was filed with the delay of 158 days. Further, he would submit that the delay



W.P.No.34751 of 2023

period has to be computed from the date of service of original order (20.07.2021) and not from the date of service of recovery notice (16.06.2022). He would also suggest the petitioner to avail the Amnesty scheme.

7. In reply, the learned counsel for the petitioner would submit that an Assessee can avail the Amensty scheme only if he had not filed any appeal. However, in the present case, since the petitioner had already filed the appeal, they are not in a position to avail the said Amnesty scheme.

8. The learned counsel for the respondent had produced a Notification No.53/2023-Central Tax dated 02.11.2023 before this Court, wherein it has been stated as follows:

“SO (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 taxable persons who



W.P.No.34751 of 2023

could not file an appeal against the order passed by the proper officer on or before the 31 day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases.

The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub- section (1) of Section 107 of the said Act, on or before 31 day of January 2024”

9. By referring the above notification, he would submit that the petitioner can very well avail the said Amnesty Scheme.

10. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record, particularly, the



W.P.No.34751 of 2023

Notification No.53/2023-Central Tax dated 02.11.2023, produced by the respondent.

11. On perusal of the said notification, it appears that even after the rejection of appeal on the aspect of delay, the petitioner can very well avail the Amnesty scheme. In such view of the matter, this Court directs the petitioner to avail the Amnesty scheme in terms of Notification No.53/2023-Central Tax dated 02.11.2023. Thereafter, the 1st respondent is directed to consider the same in accordance with law.

12. With the above directions, this writ petition is disposed of. No cost. Consequently, the connected miscellaneous petitions are also closed.

15.12.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Note: Issue order copy on 19.12.2023.



W.P.No.34751 of 2023

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W.P.No.34751 of 2023

KRISHNAN RAMASAMY.J.,

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