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W.P.Nos.34770, 34774 & 34777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.34770, 34774 & 34777 of 2023

and

W.M.P.Nos.34756, 34761 & 34748 of 2023

Comfort Shoe Components,
Rep by its Proprietor Rafeeqe Ahmed,
5/1, Aerikari,
Ambur, Thirupathur 635 802.

... Petitioner in all petitions

Vs.

Assistant Commissioner,
Ambur, Vellore.

... Respondent in all petitions

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the orders dated 28.03.2023 in Form GST ASMT-13 with Ref Nos.ZD330323137506O and ZD330323137686E respectively and also the order dated 10.04.2023 in Form GST ASMT-13 with Ref No.ZD330423037826F issued by the respondent and quash the same.



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For Petitioner
in all petitions : Mr.Adithya Reddy

For Respondent
in all petitions : Ms.Amirta Dinakaran,
Government Advocate

COMMON ORDER

These writ petitions have been filed challenging the orders dated 28.03.2023 and 10.04.2023 passed by the respondent.

2. Ms.Amirta Dinakaran, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the petitioner was not able to file their returns for the month of December 2022, January 2023 and February 2023 within the prescribed time limit. Hence, the respondent had passed the impugned orders, which are the best judgement assessment orders, in terms of the provisions of Section



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62(1) of the Goods and Services Tax Act, 2017 (hereinafter called as “GST Act”) on 28.03.2023 for the month of December, 2022 and January 2023 and on 10.04.2023 for the month of February 2023. Thereafter, the petitioner had taken steps and filed the returns for the month of December 2022 and January 2023 on 30.04.2023. Further, the petitioner had also filed the returns for the month of February 2023 on 24.06.2023.

4. Further, he would submit that as per the terms of Section 62(2) of the GST Act, if an Assessee filed his returns within a period of 30 days from the date, on which the assessment order was served to him, the said assessment order passed by the Department will deemed to be withdrawn. In the present case, there was a delay in filing the returns due to financial difficulties faced by the petitioner. Hence, he prays this Court to condone the said delay and quash the impugned assessment orders passed by the respondent.



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5. In reply, the learned Government Advocate appearing for the respondent would submit that only if the returns were filed within a period of 30 days from the date on which the best judgement assessment orders were served, the petitioner is certainly entitled to avail the benefit, which is available under Section 62(2) of the GST Act. However, in the present case, the returns were not filed by the petitioner within the prescribed time limit. Hence, she requested this Court to pass appropriate orders.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. In the present case, the returns were not filed by the petitioner for the month of December 2022, January 2023 and February 2023 within the prescribed time limit. Hence, the impugned orders dated 28.03.2023 and 10.04.2023 have been passed by the respondent under Section 62(1) of the GST Act. Thereafter, the returns were filed by the



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petitioner for the month of December 2022 and January 2023 on 30.04.2023 and for the month of February 2023 on 24.06.2023.

8. At this juncture, it would be appropriate to extract Section 62 of the GST Act, which reads as follows:

“62. Assessment of non-filers of returns.—

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability



*for payment of interest under sub section (1) of section 50
or for payment of late fee under section 47 shall continue.”*

9. A reading of the above provision would make it clear that if any registered person fails to furnish the returns under Section 39 of the Act, a proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant materials, which are available or which he has gathered and pass an assessment order within a period of 5 years from the date specified under Section 44 of the Act for furnishing of the annual return for the financial year, in which the tax was not paid.

10. In the present case, since the petitioner had not filed the returns for the months of December 2022, January 2023 and February 2023 within the prescribed time limit, the assessment order has been passed by the respondent under Section 62(1) of the GST Act on 28.03.2023 and 10.04.2023.



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11. In terms of the provisions of Section 62(2) of the GST Act, if a registered person furnishes the valid returns within a period of 30 days of the service of assessment order under Sub-section (1) of Section 62 of the GST Act, the said assessment order would be deemed to have been withdrawn. However, the liability for the payment of interest of Sub-section (1) of Section 50 of the GST Act or for payment of late fee under Section 47 of the GST Act shall continue.

12. The idea of implementation of the said provision is to afford an opportunity to the registered person to furnish and file the returns within a period of 30 days from the date of service of assessment order, which was passed under Section 62(1) of the GST Act.

13. Now the issue is what will be the situation if the petitioner failed to furnish the returns within a period of 30 days as prescribed under Section 62(2) of the GST Act. Whether the petitioner will lose his opportunity to file the returns or the petitioner will still be entitled to file the returns by providing sufficient reasons for non-filing of returns,



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whereby enabling the respondent to condone the delay and accept the returns of the petitioner.

14. Further, the respondent can make the best judgement assessment order within a period of 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 31.03.2023, in which case, the petitioner is liable to file the annual returns on or before 31.12.2023. Therefore, the said period of 5 years to make the best judgement assessment order for the respondent will start on 01.01.2024 and ends on 31.12.2029. In such case, if the best judgement assessment order is passed by the respondent on 31.12.2029, which is permissible under Section 74 of the GST Act, the petitioner can file his returns within a period of 30 days therefrom i.e., on or before 30.01.2030. Hence, the time limit is available up to 30.01.2030 for the petitioner to file their returns. When such being the case, since the best judgement assessment order has been made by the respondent at the earliest point of time, the legal right of the petitioner to file the returns,



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which is available under Section 62 of the Act, cannot be taken away. If the best judgement assessment order has not been passed on the earlier date, the petitioner can file his returns even without paying any interest or penalty.

15. Further, if the registered person was not able to file the returns within a period of 30 days for the reasons, which are beyond his control, the said delay may be condoned upon providing of sufficient reasons by the said person. Since Section 62 of the GST Act permits the person to file their returns as stated above, making the assessment at the earliest point of time and fixing the time limit of 30 days period will curtail the right, which is available for the Assessee.

16. In view of the above, the limitation of 30 days period prescribed under Section 62(2) of the Act appears to be directory in nature and if the Assessee was not able to file the returns for the reasons, which are beyond his control, certainly the said delay can be condoned and thereafter, the Assessee can be permitted to file the returns after



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payment of interest, penalty and other charges as applicable. At any cost, the right to file the returns cannot be taken away stating that the petitioner has not filed any returns within a period of 30 days from the date of best judgement assessment order. Thus, if any application is filed before the Authority concerned with sufficient reasons for non-filing of returns within the prescribed time limit as per section 62(2) of the Act, the same shall be considered on merits. If the Authority is satisfied with the said reasons, they can condone the delay and permit the petitioner to file the returns. However, in the present case, no such application was filed by the petitioner. Therefore, this Court is inclined to pass the following orders:

(i) The petitioner is directed to file an application for condonning the delay in filing the returns within a period of 15 days from the date of receipt of copy of this order;

(ii) Upon filing of the application for condonation of delay, the respondent is directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 30 days from the service of best



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judgement assessment order and thereafter, permit the petitioner to file the revised returns;

17. With the above directions, these writ petitions are disposed of.

No costs. Consequently, the connected miscellaneous petitions are also closed.

14.12.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

Assistant Commissioner,
Ambur, Vellore.



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KRISHNAN RAMASAMY.J.,

nsa

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