IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : **21.12.2023**
CORAM:

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P No.35847 of 2023
and WMP Nos.35841 & 35842 of 2023

Tvl.GT India Private Limited
Represented by its Director Mr.Arvind Kumar
No.31-32, New No.81-83, I Floor,
G.T House, Dr.Alagappa Road,
Chennai – 600 084.
... Petitioner

vs.

1. The State Tax Officer
Purasawakkam Assessment Circle
F-50, 1st Avenue, I Floor,
Annanagar (East), Chennai – 600 102.

2.Deputy Commissioner (ST)
(GST Appeals), Chennai I
Greams Road, Chennai – 600 006. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari calling for the records on the file of the 1st respondent in GST:33AACCG0975D1ZZ/2018-19 dated 02.06.2023 and consequential order u/s 73 and Form GST DRC-07 having reference No.ZD3306230120252 both dated 05.06.2023 for the tax period April 2018 – March 2019 relating to Financial Year 2018-19 and quash the same as illegal, contrary to the provisions of the TNGST/CGST Acts.

For Petitioner	:	Mr.T.PRamod Kumar Chopda Senior Counsel for Mr.P.Aruna Chopda
For Respondents	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate (Tax)

ORDER

This writ petition has been filed to call for the records on the file of the 1st respondent in GST:33AACCG0975D1ZZ/2018-19 dated 02.06.2023 and consequential order passed u/s 73 and Form GST DRC-07 having reference No.ZD3306230120252 both dated 05.06.2023 for the tax period April 2018 – March 2019 relating to the Financial Year 2018-19 and to quash the same.

2. The petitioner is a registered tax payer under GST Act. The 1st respondent issued notices in i) Form GST ASMT-10 dated 22.12.2021, i) Form GST DRC 01A after eight months, on 03.09.2022 and iii) Form GST DRC 01A on 01.06.2023 and for each of the said notices the petitioner filed their respective reply. However, the 1st respondent, without considering the aspect that the claim of ITC was supported by tax invoices and bank statement showing payment inclusive of tax to the suppliers, who are existing registered dealers during the relevant period and without even providing opportunity of personal hearing to the petitioner, passed the impugned order and consequential order u/s 73 confirming the proposal relating to alleged excess claim of Input Tax Credit. Hence, the present writ petition.

3. Today, when the matter is taken up for hearing, the learned counsel appearing for the petitioner would submit that though the petitioner sought for a larger relief, now, he would restrict the relief to the extent that it would suffice if this Court passes an order permitting the petitioner to file a statutory appeal.

4. On the other hand, it is the contention of the learned Government Advocate appearing for the respondents that the appeal has been filed with a delay of 69 days, which includes the condonation period and the 39 days mentioned by the petitioner excludes the limitation period of 30 days.

5. In the present case, a show cause notice was issued to the petitioner on 01.06.2023, by virtue of which, the petitioner has to file reply on or before 02.07.2023, however, the petitioner filed their reply on the very next day, i.e. on 02.06.2023 and the respondent passed the assessment order on the very same date itself, i.e. 02.06.2023. Since the petitioner filed their reply on the very same date, on which, notice was issued to the petitioner, i.e. on 01.06.2023, the petitioner was under an impression that the order would be passed after the time limit fixed for filing the reply, i.e. 02.07.2023. However, 1st the respondent passed the assessment order on the very same day, on which, reply was filed by the petitioner i.e. 02.06.2023 and the petitioner came to know about the said impugned order only when the 1st respondent issued recovery notice dated 19.10.2023, which was received by the petitioner on 28.10.2023. Thereafter, the petitioner immediately took steps to file the appeal, however, with a delay.

6. The learned Government Advocate (Taxes) appearing for the respondents would contend that as per the Statute, the delay in filing the appeal will be condoned upto 30 days, however, he submits that if

any order is passed by this Court, the same would be complied with by the respondents.

7. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Taxes) appearing for the respondents and perused the materials on record.

8. Taking into consideration of the submissions of the learned counsel appearing for the petitioner as well as the respondents and on perusal of the materials on record, it appears that the reasons assigned by the petitioner for the delay in filing the Appeal are reasonable. Hence, this Court is inclined to condone the delay, as, the petitioner's right to prefer appeal cannot be deprived of on account of the delay, which has occurred beyond their control. Accordingly, the delay in filing the appeal is condoned.

9. Therefore, the Appellate Authority is directed to entertain the appeal filed by the petitioner and dispose of the same, in accordance with law.

10. With the above direction, this writ petition stands disposed of. Consequently, connected miscellaneous petitions are closed.

21.12.2023

Index: Yes/No
Speaking/Non-Speaking Order
Neutral Citation: Yes/No.
rgr

<u>To</u>

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KRISHNAN RAMASAMY, J.

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