BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.16111 of 2023
and
W.M.P.(MD).No.13499 of 2023

K.Murugan ... Petitioner

Vs.

1.The Commissioner of Central Excise (Appeals),
No.4, Lal Bahadur Sastri Road,
Bibikulam,
Madurai.

2.The Assistant Commissioner of Central GST and Excise,
No.913, Catholic Centre,
Main Road,
Kovilpatti,
Thoothukudi District. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the first respondent to take on file the appeal preferred by the petitioner against the order passed by the second respondent in KVPT-000-AC-06/2021 dated 16.12.2021 without reference to the delay by condoning the same and decide the appeal on merit and in accordance with law.

For Petitioner : Mr.S.Sivailayaraja

For Respondents : Mr.R.Nandakumar,
Senior Standing Counsel,
Assisted by,
Mr.S.Ragaventhree,
Junior Standing Counsel.

ORDER

This Writ Petition is filed for Mandamus, directing the first respondent to take on file the appeal preferred by the petitioner against the order passed by the second respondent in KVPT-000-AC-06/2021 dated 16.12.2021 without reference to the delay by condoning the same and decide the appeal on merit and in accordance with law.

2. The petitioner is an ex-service man. After completion of successful army service, the petitioner is executing "work contract" for the Government construction under the Public Works Department. The petitioner is a license contractor and registered under Service Tax during the VAT regime itself. The service tax assessment was conducted for the year 2013-2014 until 2015. The contention of the petitioner is that the respondents have not served the copy of the assessment order dated 16.12.2021, but the petitioner came to know about

the order only on 02.06.2023, when the petitioner account was frozen by the respondents. Thereafter, the petitioner has submitted an appeal along with the condone delay petition. The contention of the petitioner is that the order-in-original was not served to the petitioner. However, the respondents denied the same and has produced the copy of the acknowledgment.

3. On perusing the acknowledgment, it is seen that the petitioner's wife has received the same. However, there was no communication between the petitioner and his wife. Hence, the petitioner is not in a position to file an appeal in time.

4. The learned counsel appearing for the respondents submitted that there is a huge delay of 455 days. But learned counsel appearing for the petitioner relied on the judgment rendered by the Gujarat High Court in the case of *M/s. Manjeet Cotton Private Limited Vs Commissioner of State Tax in R/Special Civil Application No.16857 of 2022 dated 15.12.2022* and the relevant portion of the order is extracted hereunder:

> *"9. Be that as it may, for present, the petitioner is desirous of going to the Appellate Authority for questioning and challenging the assessment which has been finalized and*

that being his right, if he has missed out on the limitation, condoning this period of limitation in the given circumstance, keeping the larger issue open, this petition is allowed".

5. Therefore, considering the facts and circumstances of the case, this Court is inclined to allow this Writ Petition. The petitioner is directed to file an appeal within a period of four (4) weeks from the date of receipt of a copy of this order. The respondents are directed to take the petitioner's appeal on file and consider the appeal on merits. As far as the delay is concerned, the petitioner is directed to pay Rs.5,000/- (Rupees Five Thousand only) to the respondents to condone the delay. The respondents shall consider the appeal within a period of four (4) months therefrom.

6. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

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S.SRIMATHY, J.

Nsr

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