IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.01.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.656 of 2024
and W.M.P.No.676 of 2024

M/s.Vishal Export, Rep. by its Proprietor Palanisamy Sivakumar,
14, NA, Om Sakthi Garden,
Perichipalayam, Dharapuram Road,
Tirupur 641 608. ... Petitioner

-vs-

1.The Appellate Deputy Commissioner (ST) (GST)
Salem and Erode, State Tax Building, Brough Road, Erode.

2.The Assistant Commissioner (ST) (FAC)
Tirupur Bazaar Assessment Circle, Tiruppur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, calling for the impugned order on the file of first respondent vide ref. no. 731/2023/A1 dated 28.11.2023 and quash the same and condone two days delay in filing appeal beyond statutory period and direct the first respondent to admit the appeal against the assessment order dated 10.05.2023 for the year 2019-20.

For Petitioner : Mr.J.Madhusuthanan

For Respondent : Mr.C.Harsha Raj, AGP

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ORDER

The petitioner assails an order dated 28.11.2023 by which the appellate authority rejected the appeal on the ground that the same is time barred.

2. The petitioner asserts that he is a registered person under GST laws and that returns are being filed by him regularly. The petitioner further asserts that he was unaware of the show cause notice and assessment order dated 10.05.2023 until 10.09.2023, when he was informed about the same orally by the second respondent. It is further stated that the petitioner filed an appeal on 11.09.2023 before the appellate authority by making the requisite pre-deposit. By the impugned order, the appellate authority concluded that the three month period for filing the appeal lapsed on 09.08.2023 and that the thirty day period for condonation of delay expired on

09.09.2023. The present writ petition was filed in the above facts and circumstances.

3. Learned counsel for the petitioner submits that the petitioner would be put to great hardship if the appeal is not considered on merits because the liability of the petitioner is about Rs.17,36,136/- under the impugned order. By referring to the death of the petitioner's mother on 11.08.2023, as evidenced by the death certificate at page 69 of the typed set, learned counsel submits that the delay is only by two days and that the same may be condoned.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondents. By referring to Section 107 of the TNGST Act, 2017, learned counsel submits that the appellate authority had power to condone a delay of thirty days over and above the prescribed three month limitation period. Therefore, he submits that the impugned order contains no infirmity.

5. The facts are largely undisputed. The assessment order was issued on 10.05.2023. Section 107(1) of the TNGST Act prescribes a limitation period of three months from the date of receipt of the order. Under sub-section (4) thereof, the appellate authority is empowered to condone delay of up to one month if sufficient cause is shown. The present appeal was filed by the petitioner before the appellate authority on 11.09.2023. Since this exceeds the thirty day period prescribed in sub-section (4), the appellate authority cannot be faulted for rejecting the appeal.

6. Nonetheless, the petitioner presented the appeal on 11.09.2023 and made the requisite pre-deposit. Apart from asserting that the petitioner was unaware about the show cause notice and assessment order, significantly, the petitioner has placed on record the death certificate of his mother and the said certificate indicates that she died on 11.08.2023. In these circumstances, without intending to establish a precedent in such matter, the petitioner should be provided an opportunity to prosecute the appeal.

7. For reasons set out above, the impugned order is quashed and the first respondent is directed to receive and dispose of the petitioner's appeal on merits. W.P.No.656 of 2024 is allowed. No costs. Consequently, W.M.P.No.676 of 2024 is closed.

12.01.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

1.The Appellate Deputy Commissioner (ST) (GST)
Salem and Erode, State Tax Building, Brough Road, Erode.

2.The Assistant Commissioner (ST) (FAC)
Tirupur Bazaar Assessment Circle, Tiruppur.

SENTHILKUMAR RAMAMOORTHY,J

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