IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.15549 of 2024 and
W.M.P.Nos.16924 & 16925 of 2024

Tvl. Kimpex Opticals,
Represented by its Proprietor,
Suresh Kumar H.
No.128, Baker street,
Broadway, Chennai-600 108. .. Petitioner

-vs-

1. The Deputy Commissioner (ST),
GST-Appeal, Chennai 1,
3rd floor, C.T.Annexe Building,
No.1, Greams Road,
Chennai-600 006.

2.The Assistant Commissioner (ST)(FAC),
Loansquare Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Room No 309, 3rd Floor,
Elephant Gate Bridge Road, Vepery,
Chennai 600003. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in RC No.756/2024 dated 19.03.2024, quash the same and condone the delay of two months and 10 days in filing the appeal beyond statutory period and direct the first respondent to admit the appeal.

For Petitioner : Ms.G.Rekha Roshini
for Mr.P.R.Kumar

For Respondents : Mrs.K.Vasanthamala, Govt. Adv. (T)

ORDER

By this writ petition, an appellate order dated 19.03.2024 is assailed. An order in original dated 24.08.2023 was issued and tax, interest and penalty liability was imposed on the petitioner. Such order was carried in appeal before the 1st respondent. By order dated 19.03.2024, such appeal was rejected on the ground that it was filed beyond the period of limitation.

2. Learned counsel for the petitioner submits that the petitioner's son was unwell and was undergoing dialysis. Therefore, she submits that the petitioner was unable to monitor the GST portal, and did not participate in proceedings. She further submits that the appeal was rejected solely on the ground of delay. She points out that 10% of the disputed tax demand was remitted at the time of presentation of the appeal. On instructions, she

submits that the petitioner agrees to remit an additional 5%.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondents. She submits that principles of natural justice were complied with before issuing the order in original. As regards the appeal, she submits that such appeal was rejected because it was presented beyond the condonable period.

4. On examining the order in original, it is evident that the tax proposal related to a mismatch between the petitioner's GSTR 3B return and the GSTR 1 statement. Such tax proposal was confirmed because the petitioner did not reply to the show cause notice or appear at the personal hearing. In the affidavit in support of this writ petition, the petitioner has stated that he is a small dealer in optical devices and was unable to monitor the portal especially in view of his son's kidney ailment. In these facts and circumstances, albeit by putting the petitioner on terms, it is just and appropriate that the petitioner be provided an opportunity to contest the tax demand on merits.

5. For reasons set out above, by moulding the relief, W.P.No.15549 of

2024 is disposed of without any order as to costs by setting aside the order in original dated 24.08.2023 and remanding the matter to the 2nd respondent for reconsideration. This is subject to the petitioner remitting an additional 5% of the disputed tax demand. Such remittance shall be made within a period of 15 days from the date of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 15% of the disputed tax demand was received in the aggregate, the 2nd respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within a period of three months from the date of receipt of the petitioner's reply. Consequently, connected miscellaneous petitions are closed.

21.06.2024

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

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To

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SENTHILKUMAR RAMAMOORTHY,J

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