IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.18404 of 2024

M/s.Maruvur Arasi Logistics Pvt. Ltd.
Catholic Centre, No.108, II Level,
Armenian Street, Chennai-600 001
Rep. by its Managing Director D.Bhaskaran ... Petitioner

-vs-

1. The Deputy Commissioner (ST) (GST Appeals)
Range I, Greams Road, Thousand Lights
Chennai-600 006.

2. The Deputy State Tax Officer-II
Harbour Assessment Circle
No.32, Integrated Commercial Taxes Building
Room No.325, 3rd Floor
Elephant Gate Bridge Road
Chennai-600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Mandamus, seeking the indulgence of this Court, to direct the first respondent, being the first appellate authority, to entertain the appeal dated 26.04.2024 filed by the petitioner, as against the order passed by the 2nd respondent dated 17.11.2023 dated under reference GSTIN: 33AAGCM5859A1ZM/

2017-18, by condoning the delay of 39 days, after the condonable period as provided under sec.107 of the CGST/SGST Act, in filing such appeal before the 1st respondent.

For Petitioner : Mr.Baskaran S.

For Respondents : Mr.V.Prashanth Kiran
Govt. Advocate (T)

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ORDER

The petitioner seeks a direction to the first appellate authority to consider the appeal filed by the petitioner against the order in original dated 17.11.2023.

2. The petitioner states that the only directors of the petitioner company are Mr.D.Baskaran and Mrs.D.Vasantha, who are son and mother, respectively. GST compliances were entrusted to an auditor and because the auditor did not inform the petitioner about the proceedings initiated against it, it is stated that the tax proposal was not contested on merits. Upon coming to know of the order in original, an appeal was filed on 26.04.2024 by paying 10% of the disputed tax demand. Since the appeal was presented about 39 days

after the expiry of the condonable period, the petitioner was informed that the appeal cannot be entertained.

3. Learned counsel for the petitioner referred to the above mentioned facts and circumstances and submitted that the petitioner was not heard by the original authority before the order was issued. Although the relief claimed is for consideration of the appeal, he submits that the petitioner is agreeable to remit an additional 5% of the disputed tax demand if the matter is remanded to the original authority for consideration.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that principles of natural justice were complied with before the order in original was issued by issuing show cause notice dated 08.09.2023 and by offering a personal hearing.

5. On examining the original in original, it is evident that the tax proposals were confirmed because the taxpayer failed to reply to the show cause notice. In the affidavit, the petitioner set out reasons for

non-participation in the proceedings. The appellate authority was constrained to not consider the appeal because such appeal was presented beyond the condonable period. In these circumstances, the petitioner should not be left without remedy. Subject to imposing terms on the petitioner, it is just and appropriate that the petitioner be provided an opportunity to contest the tax demand on merits before the original authority.

6. For reasons aforesaid by moulding the relief, the order in original dated 17.11.2023 is set aside on condition that the petitioner remits an additional 5% of the disputed tax demand within fifteen days from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to reply to the show cause notice. Upon receipt of the petitioner's reply and on being satisfied that 15% of the disputed tax demand, in the aggregate, was received, the second respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply.

7. W.P.No.18404 of 2024 is disposed of on the above terms. No costs.

30.07.2024

Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

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SENTHILKUMAR RAMAMOORTHY J.

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