IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19256 of 2024
WMP.Nos.21118 and 2119 of 2024

M/s.Manickam Enterprises,
by its Partner Manickavasagam
Salem 636004 Petitioner

Vs

1. The Assistant Commissioner (ST)
   Alagapuram Assessment Circle, Salem

2. The Deputy Commissioner (ST)(GST)(Appeal)
   Erode and Salem, Salem-7 Respondents

Prayer:- This Writ Petition is filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the order dated 26.04.2024 in ROC.No.413/1A/2024, with reference to 33AAXFM6586A1ZX/2017-18, vide Ref.No.ZD330723123592L/2023-24, on the file of the Respondents and to quash the same.

For Petitioner : Mr.J.Sudhakaran

For Respondents : Mr.G.Nanmaran, SGP

ORDER

1. This Writ Petition is filed for issuance of Writ of Certiorari to call for the records relating to the order, dated 26.04.2024 in ROC.No.413/1A/2024, with reference to 33AAXFM6586A1ZX/2017-18, vide Ref.No. ZD330723123592L/2023-24, on the file of the Respondents and to quash the same.

2. The Petitioner was issued with a show cause notice under Section 74 of the Tamil Nadu General Sales Tax Act, 1959, dated 09.03.2023, demanding tax with penalty and interest. By proceedings dated 28.07.2023, the 1st Respondent confirmed the proposal as stated in the said show cause notice. As against the same, the Petitioner filed an appeal under Section 107 of the said Act before the 2nd Respondent on 28.02.2024 with a delay of 92 days and the appeal was rejected by the 2nd Respondent by the impugned order dated 26.04.2024 on the grounds of delay and that there is no provision under the Act to consider the delay. Hence, this Writ Petition has been filed, seeking relief as stated above.
3. This Court heard the learned counsel on either side and also perused material records placed before this Court.
4. The learned counsel for the Petitioner would submit that the impugned assessment order was passed, without affording sufficient opportunity of personal hearing to the Petitioner, thereby violating the principles of natural justice. The impugned order assessment order was passed on the ground that the Petitioner did not file any objections within the prescribed time of 15 days. Since the Petitioner was not aware of show cause notice issued through the GST Portal, they were not able to file their objections in time. The appeal filed by the Petitioner was dismissed by the 2nd Respondent only on the ground that there is no provision under the Act to consider the delay. In such circumstances, the learned counsel for the Petitioner seeks an opportunity to contest the tax demand on merits and on instructions, he

would submit that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of the impugned assessment period.

5. The learned Standing Counsel for the Respondents would submit that the show cause notices was issued through Postal and another notice was issued through the GST portal and hence, the Petitioner cannot complain of the breach of principles of natural justice, however, subject to payment of 10% of the disputed tax demand, the Respondents will consider the appeal and pass fresh orders, on merits and in accordance with law.

6. Upon examining the impugned orders, it is evident that the tax proposal was confirmed because the Petitioner failed to reply to the show cause notice or attend the personal hearing. The appeal was dismissed only on the ground that there is no provision under the Act to condone the delay. But, according to the Petitioner, the reason for not sending their objections to the show cause notice is that they were not aware of the notice issued through the GST Portal and the Petitioner would be able to establish their case if an opportunity is provided. In the opinion of this Court, the reasons stated in the affidavit appear to be genuine. In these circumstances, it is just and necessary to provide an opportunity to the Petitioner to contest the tax demand on merits by putting the Petitioner on terms.

7. In the above said facts and circumstances, the delay in filing the appeal is condoned and the appeal is restored to the file of the 2nd Respondent and the matter is remanded back to the 2nd Respondent, by setting aside the impugned order on condition that the Petitioner remits 10% of the disputed

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tax demand in respect of the impugned assessment period and pays another sum of Rs.10,000/- (Rupees ten thousand only) to the Adyar Cancer Institute, Adyar, Chennai 600022, within two weeks from the date of receipt of a copy of this order. Upon receipt of 10% of the disputed tax demand for the impugned assessment year and confirmation of the above said amount to the Adyar Cancer Institute, the 2nd Respondent is directed to consider the appeal afresh and pass fresh orders, on merits and in accordance with law, after providing a reasonable opportunity to the Petitioner, including a personal hearing, within a period of eight weeks thereafter.

8. With the above directions and terms, this Writ Petition is disposed of. No costs. Consequently, the connected MPs are closed.

05.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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