IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.No.19438 of 2024
WMP.Nos.21291 and 21293 of 2024

M/s.Penguin, by its Proprietor Arthi
Erode 638452 ... Petitioner

Vs

1. The Deputy Commissioner (ST)(GST)(Appeal)
   Erode and Salem, Erode 638001

2. The Commercial Tax Officer, Gobichettipalayam
   Erode ... 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 in Form DRC-07 in Ref.No.ZD330923171077B/2018-2019, dated 25.09.2023 passed by the 2nd Respondent and the consequential order dated 23.05.2024 in ROC.No.383/2024/A1 passed by the 1st Respondent and to quash the same.

For Petitioner : Mr.Vasanthanayagan K

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 in Form DRC-07 in Ref.No.ZD330923171077B/2018-2019, dated 25.09.2023 passed by the 2nd Respondent and the consequential order dated 23.05.2024 in ROC.No.383/2024/A1 passed by

the 1st Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner is carrying on the business of textile and that the 2nd Respondent issued a show cause notice dated 25.07.2023 calling for explanation from the Petitioner, fixing the date of personal hearing on 16.08.2023. The Petitioner submitted a reply and appeared for personal hearing, pointing out the reasons for mismatch and the same was corrected and reconciled. Without considering the explanation of the Petitioner, the 2nd Respondent issued the impugned order dated 25.09.2023 through the Online Portal. Hence, he was not aware of the same. However, on coming to know about the same in the month of January 2024, the Petitioner filed an appeal before the 1st Respondent by enclosing all necessary documents and paying pre-deposit of Rs.35,066/-, with a delay 21 days. However, the appeal was rejected by the 1st Respondent by the impugned order dated 23.05.2024 only on the ground that there is no provision under the Act to condone the delay. Hence, this Writ Petition has been filed, seeking the 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 appeal was rejected only on the ground of delay, stating that there is no provision under the Act to condone the delay and not on merits, though the Petitioner filed

relevant documents, stating sufficient reasons for mismatch of the amounts in the relevant forms and hence, the learned counsel for the Petitioner seeks an opportunity to contest the tax demand on merits, by setting aside the impugned orders.

5. The learned Standing Counsel for the Respondents would submit that if this Court is inclined to condone the delay, appropriate orders may be passed.

6. Upon examining the impugned orders, it is evident that the appeal was dismissed only on the ground that there is no provision under the Act to condone the delay and there is no whisper about the reply filed by the Petitioner having been considered by the Petitioner. But, according to the Petitioner, the reason for not filing the appeal in time is that the Proprietor of the Petitioner Firm was not well at the relevant point of time 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. It is also not in dispute that the Petitioner had already made a pre-deposit of Rs.35,066/- which is more than 10% of the demanded tax amount. In these circumstances, it is just and necessary to provide an opportunity to the Petitioner to contest the tax demand on merits.

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 1st Respondent and the matter is remanded back to the 1st Respondent, by setting aside the

impugned orders. The 1st Respondent is directed to consider the appeal afresh and pass 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 from the date of receipt of a copy of this order.

KRISHNAN RAMASAMY, J.

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

07.08.2024

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

1. The Deputy Commissioner (ST)(GST)(Appeal), Erode and Salem, Erode 638001

2. The Commercial Tax Officer, Gobichettipalayam, Erode

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