IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.25157 of 2024 &
W.M.P.No.27473 of 2024

A.V.Engineering,
Represented by its Proprietor,
Chennappan Arumugam,
Shop No.1, Main Road,
Jennikollai Village,
Oppathavadi Post,
Krishnagiri District-635 104. ...Petitioner

Vs.

1. The Appellate Deputy Commissioner (ST), GST,
Salem and Erode,
Commercial Taxes Building,
Pitchards Road, Salem-636 007.

2. The Assistant Commissioner (ST),
Krishnagiri-II, Assessment Circle,
Krishnagiri-635 001. ... Respondents

Prayer : This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents and quash the order of the 1st respondent, dated 07.07.2022 passed in Appeal No.181 of 2022 and order of the 2nd respondent dated 11.11.2019 vide Reference No.ZA3311190356899 and direct the 2nd respondent to restore the petitioner's GSTIN No.33BXYPA9012J1Z9.

For Petitioner : Mr.Laksh Singhv
for Mr.V.Gokulraj
For Respondents : Mr.V.Prashanth Kiran,
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 07.07.2022 passed by the first respondent.

2. Mr.V.Prashanth Kiran, learned Government Advocate (Tax), takes notice on behalf of the respondents.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submitted that the second respondent issued a show cause notice dated 15.10.2019, calling upon the petitioner to explain the non-filing of returns for an unspecified period. Due to Covid 19 pandemic outbreak, the petitioner was severely affected and was not able to file any reply to the said show cause notice, which led to the second

respondent passing the impugned order dated 11.11.2019, cancelling the GST registration of the petitioner from 15.10.2019. Aggrieved by the said impugned order, the petitioner preferred an appeal before the first respondent on 14.06.2022 with a delay of 4 months and 5 days. The said appeal was rejected by the appellate authority vide order dated 07.07.2022, on the ground that the appeal has been filed beyond the statutory period. The main contention of the learned counsel for the petitioner is that for non-filing of the appeal in time, is that the petitioner was all along waiting for the constitution of the Appellate Tribunal to adjudicate the matter. However, since the constitution of the Appellate Tribunal is not being effected, the petitioner is constrained to approach this Court for appropriate orders.

5. Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) appearing for the respondents submitted that there was a delay of 4 months in filing the appeal and even thereafter there was a delay of 2 years to approach this Court. He would further submit that nothing prevented the petitioner to approach this Court immediately after the order of the Appellate Authority. Further, the reason provided by the petitioner is even for non-constitution of Appellate Tribunal, in which case, the jurisdiction lies before this Court,

however, the petitioner has not taken any steps to challenge the impugned order. Hence, he prayed for dismissal of the present Writ Petition.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate (Taxes) for the respondents and perused the materials available on record.

7. In the present case, the reason assigned for the delay in filing the appeal is on account of Covid-19 outbreak, due to which, the petitioner was unable to file the appeal within the time. The said reason appears to be genuine and the reason provided for not approaching this Court well before is not acceptable. However, in the other way, the constitution of Appellate Tribunal is not coming into effect as on today. Under these circumstances, this Court is inclined to entertain the Writ Petition filed by the petitioner by remanding the matter to the Appellate Authority for passing appropriate orders.

8. Accordingly, this Court passes the following orders:

(i) The order dated 07.07.2022, passed by the first respondent/Appellate Deputy Commissioner is set aside and the delay of 4 months and 5 days in filing the appeal before the Appellate Authority is condoned.

(ii) The first respondent/Appellate Deputy Commissioner (ST) GST Appeal, is directed to take the appeal on record and pass appropriate orders on merits and in accordance with law, after providing an sufficient opportunity to the petitioner, as expeditiously as possible.

9. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed

04.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd

To
1. The Appellate Deputy Commissioner (ST), GST,
Salem and Erode,
Commercial Taxes Building,
Pitchards Road, Salem-636 007.

2. The Assistant Commissioner (ST),
Krishnagiri-II, Assessment Circle,
Krishnagiri-635 001.

Krishnan Ramasamy,J.,
jd

W.P.No.25157 of 2024

04.09.2024