IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.09.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.25264 of 2024 &
W.M.P.Nos.27599 & 27600 of 2024

Tvl. New Asian Transporters,
Represented by its Proprietor
S.Rangaraj, S/o.Subbian,
No.115-4, Poothottam, Vellakinar Pirivu,
G.N.Mills (Post), Coimbatore-641 029. ...Petitioner

-Vs-

1. The Deputy Commissioner (Appeals),
Commercial Taxes Building,
Balasundaram Road, Coimbatore-641 018.

2. The Assistant Commissioner (CT),
Thudiyalur Assessment Circle,
1st Floor, Annexure Building,
CTO Complex, Dr.Balasundaram Road,
Coimbatore-641 018. ... Respondents

Prayer : This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in order reference No.1401/2023 dated 28.02.2024, quash the same and direct the 1st respondent to adjudicate the appeal filed in FORM GST-APL 01 under rule 107(1) in acknowledgement no: AD331123043379A dated 27.11.2023 in accordance with law and quash the same.

For Petitioner : Mr.R.Swarnavel

For Respondents : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 28.02.2024 passed by the first respondent.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that Show Cause Notices in Form DRC-01A dated 24.05.2022 and Form DRC-01 dated 21.06.2022 were uploaded by the second respondent on the petitioner's GST common portal, stating that there is a mismatch in the returns filed by the petitioner in respect of the assessment year 2018-2019. Since the petitioner's GST registration was cancelled due to non-filing of returns, the petitioner was

unable to access its GST portal and respond the said notices. Subsequently, the second respondent initiated another proceeding for the aforesaid mismatch in respect of the impugned assessment period and the impunged orders came to be passed by the second respondent. The main grievance of the petitioner is that though the said show cause notices and the impugned order dated 16.08.2023 were uploaded in the GST portal, the physical version of such order/notice were not served on the petitioner. The petitioner came to know about the impugned proceedings only when an attachement order passed by the second respondent, attaching the Bank account of the petitioner-company. Thereafter, the petitioner preferred an appeal before the Appellate Authority challenging the order dated 16.08.2023 passed by the second respondent. However, the first respondent/appellate authority, dismissed the appeal preferred by the petitioner, on the sole ground that the appeal has been filed beyond the statutory period.

4.1. The learned counsel for the petitioner would submit that since the petitioner was not aware of the impugned order, it was not able to file the Appeal within the time of limitation. He further submitted that since the assessment order is under challenge before the first respondent, he requested this Court to condone the delay in filing the Appeal and direct the Appellate

Authority to consider and pass appropriate orders on the appeal preferred by the petitioner.

5. Ms.Amirtapoonkodi Dinakaran, learned Government Advocate (Taxes), has no objection for condoning the delay and requested this Court to pass appropriate orders.

6. Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents and perused the material available on record.

7. In the present case, it appears that the petitioner was not aware of the impugned order dated 16.08.2023, due to which, there was a delay of 11 days in filing the appeal. In view of the settled proposition of law that when cause for substantial justice and technical considerations are pitted against each other, the cause of substantial justice should be given due weightage, this Court is inclined to condone the delay of 11 days in filing the Appeal before the Appellate Authority. Learned counsel on either side submitted that they will contest the case before the Appellate Authority.

8. In view of the above, this Court is not expressing any opinion on the merits of the order dated 16.08.2023, and leaving it open to the petitioner to work out their remedy in the appeal.

9. Accordingly, this Court passes the following orders:-

(i) The order dated 28.02.2024, passed by the first respondent/Deputy Commissioner is set aside and the delay of 11 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, if it is otherwise in order and pass appropriate orders on merits and in accordance with law, after providing an sufficient opportunity to the petitioner, as expeditiously as possible.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

04.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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Krishnan Ramasamy,J.,
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