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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.09.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.26115 of 2024
and
W.M.P.Nos.28523 & 28525 of 2024

Tvl.C.Anantha Kumar,
GSTIN:33AQIPA7849P1ZB
Represented by its Proprietor C.Anantha Kumar,
15, Arul Nagar Sanganoor, Rathinapuri,
Coimbatore- 641 027. ... Petitioner

Vs.

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

2. The Deputy State Tax Officer-1,
Thudiyalur Assessment Circle,
Dr.Balasundaram Road,
Coimbatore- 641 018.

3. The Branch Manager,
Indian Bank, CMC Building Campus,
Big Bazaar Street,
Coimbatore- 641 001. ... Respondents

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Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned Recovery Notice in Form GST DRC-13 bearing reference no.33AQ1PA7849P1ZB/2024 dated 05.08.2024, issued by the 1st Respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

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

ORDER

This writ petition has been filed challenging the Recovery Notice in Form GST DRC-13 bearing reference no.33AQ1PA7849P1ZB/2024 dated 05.08.2024, issued by the 1st Respondent and to quash the same.

2. Mrs.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that initially

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the Petitioner was issued a show cause notice dated 21.12.2022, for which the Petitioner submitted its reply on 24.01.2024 followed by additional reply, on 29.04.2024. Thereafter, the 2nd Respondent passed an order on 30.04.2024, under Section 73 of the TNGST/CGST Act, 2017 and the same was also uploaded in the "view additional notices/orders" column in the GST Portal. Against which the Petitioner filed an Appeal before the Appellate authority on 07.08.2024 with an application for condonation of delay of 6 days. He further submitted that the pending disposal of the same, impugned recovery notice dated 05.08.2024 came to be passed by the 1st Respondent , pursuant to which a sum of Rs.10,85,856/- in electronic credit ledger was recovered by the Respondent on 07.08.2024. Being aggrieved over the same, the present Writ Petition has been filed by the Petitioner.

4. Further, he would submit that since the petitioner was taking medical treatment, he filed an Appeal with a delay of 6 days and pending disposal of the Appeal, the Respondent recovered a sum of Rs.10,85,856/- from the electronic ledger, which is non est in the eye of law. He therefore prays to set aside the impugned recovery notice.

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5. The learned Government Advocate (Taxes) appearing for the respondents 1 and 2 submitted that since the Appeal has been filed against the assessment order and the same is pending before the Appellate authority. Thus, this Court may pass appropriate orders to the 1st respondent for early disposal of the appeal filed by the petitioner.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondents and also perused the materials available on record.

7. Considering the above submissions made by both the learned counsel, it appears that the petitioner had already filed an appeal against the impugned assessment order and the same is pending for adjudication before the 1st respondent. In such case, this Court is not inclined to quash the recovery proceedings. Therefore, this Court passes the following orders:

i) The 1st respondent is directed to condone the delay of 6 days in filing the appeal within a period of 2 weeks

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from the date of receipt of copy of this order;

ii) Thereafter, the 1st respondent is directed to consider and dispose of the said appeal on its own merits and in accordance with law as expeditiously as possible;

iii) In the meantime, the respondents are directed to defer the recovery proceedings till the condonning of delay in filing the appeal;.

This Writ Petition is disposed of. No costs. Consequently connected M.P.'s are closed.

13.09.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,
arr

To

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