IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29056 of 2024
and
W.M.P.Nos.31699, 31702 & 31705 of 2024

Karatadipalayam Karuppanan Thavamani ...Petitioner

Vs.

1. The Deputy Commissioner (CT) (GST) (Appeal),
Office at First Floor,
Kumaran Shopping Complex,
Kumaran Road, Tirupur-641 601.

2. The Deputy Commercial Tax Officer,
Sathiyamangalam,
Erode District. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the impugned order dated 26.12.2023 vide Reference No.ZD331223203553Z passed by the 2nd Respondent and the impugned order dated 09.07.2024 vide Reference No.ZD330724119553H passed by the 1st Respondent and quash the same.

For Petitioner : M/s.R.Reshma

For Respondents : Mrs.K.Vasanthamala,
Government Advocate (Tax)

ORDER

Challenging the impugned orders dated 26.12.2023 and 09.07.2024 passed by the first and second respondents, the petitioner has filed the present Writ Petition.

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 submitted that the second respondent has issued the intimation of liability with regard to tax payable under Section 73(5) of the Goods and Service Act, 2017 dated 27.09.2023, and thereby called upon the petitioner to provide an explanation on or before 27.10.2023, as to the difference between Form GSTR 1 and Form GSTR 2A for the financial year 2017-2018 and also directed the petitioner to pay liability of Rs.5,01,317.64/- along with interest. However, all of a sudden, the petitioner's Bank account has been attached by the second respondent, on account of recovery proceedings. Pursuant to the attachment made on the petitioner's Bank

account, the petitioner came to know about the assessment order dated 26.12.2023 passed by the second respondent. The main contention of the learned counsel for the petitioner is that without providing any opportunity of personal hearing to the petitioner to substantiate his case, the assessment order dated 26.12.2023 came to be passed by the second respondent, resulting in violation of principles of natural justice. Being aggrieved over the impugned order dated 26.12.2023, the petitioner filed an appeal before the first respondent/Deputy Commissioner (GST) (Appeal) with a delay of 43 days and the same was rejected vide order dated 09.07.2024, on the ground that the appeal has been filed beyond the limitation period. He submitted that since the petitioner was not aware of the impugned order and due to some illness, he was not able to file the Appeal within the time of limitation. He further submitted that though the impugned assessment order is under challenge in this Writ petition, he requested this Court to condone the delay in filing the Appeal before the Appellate Authority and direct the said authority to pass appropriate orders.

5. Mrs.K.Vasanthamala, learned Government Advocate (Tax) appearing for the respondents 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 (Taxes) appearing for the respondents and also perused the materials available on record.

7. In the present case, it appears that the petitioner was not aware of the impugned order dated 26.12.2023, and due to some health ailments, there was a delay of 43 days in filing the appeal. The reason assigned by the petitioner for non-filing of the appeal within time appears to be genuine, and, therefore, this Court is inclined to condone the delay of 43 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 26.12.2023, 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 09.07.2024, passed by the first respondent/Deputy Commissioner (GST) (Appeal) is set aside and the delay of 43 days in filing the appeal before the Appellate Authority is condoned.

(ii) The first respondent/Deputy Commissioner (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 closed.

03.10.2024

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

To
1. The Deputy Commissioner (CT) (GST) (Appeal),
Office at First Floor,
Kumaran Shopping Complex,
Kumaran Road, Tirupur-641 601.
2. The Deputy Commercial Tax Officer,
Sathiyamangalam, Erode District.

Krishnan Ramasamy,J.,

jd

W.P.No.29056 of 2024

03.10.2024