IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29067 of 2024
and
W.M.P.No.31715 of 2024

Tvl.Sri Mahalakshmi Traders,
Rep. by its Proprietor V.Jeevanandham,
No.5/35, Gopanurpudur,
Pollachi-642 120. ...Petitioner

Vs.

1. The Deputy Commissioner, (ST)(FAC)
GST Appeal, Coimbatore,
Commercial Taxes Building,
Coimbatore-641 018.

2. The Assistant Commissioner (ST) (FAC),
Pollachi (Rural) Circle,
Pollachi-642 001. ... 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 First Respondent in his order M.P.No.641/2024 dated 06.08.2024 and quash the same as illegal and direct the First Respondent to take the appeal filed by the Petitioner on 06.03.2024 on record and decide it on merits in accordance with law.

For Petitioner : Mr.S.Ramanathan

For Respondents : Mr.G.Nanmaran,
Special Government Pleader (Taxes)

ORDER

Challenging the order dated 06.08.2024 in M.P.No.641 of 2024 passed by the first respondent, the petitioner had filed the present Writ Petition.

2. Mr.G.Nanmaran, learned Special Government Pleader (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 time of admission stage itself.

4. The learned counsel for the petitioner submitted that the second respondent issued a notice/order in Form DRC-07 summary of the order dated 17.08.2023 on the petitioner's GST portal. According to the petitioner, the petitioner was unaware of the notice/order issued through GST portal, since the petitioner's part time accountant who had an access to portal, he failed to bring about the order dated 17.08.2023. Further, he submitted that the petitioner came

to know about the order dated 17.08.2023 only when the petitioner received a phone call from the office of the second respondent, demanding the payment of tax and penalty in the month of February, 2024. Being aggrieved over the order dated 17.08.2023, the petitioner filed an appeal before the first respondent/Deputy Commissioner (S.T) (FAC), Coimbatore, on 06.03.2024 with a delay of 79 days and the same was rejected vide order dated 06.08.2024, on the ground that the appeal has been filed beyond the limitation period of 120 days. He submitted that since the petitioner was not aware of the impugned order, he 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.

5. Mr.G.Nanmaran, learned Special Government Pleader (Taxes) 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

Special Government Pleader (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 17.08.2023, due to which, there was a delay of 79 days in filing the appeal. Considering the same and in view of the settled proposition of law that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice should be given due weightage. Therefore, this Court is inclined to condone the delay of 79 days in filing the Appeal before the Appellate authority. Accordingly, this Court passes the following orders:-

(i) The delay of 79 days in filing the appeal before the Appellate Authority is condoned and the impugned order dated 06.08.2024, passed by the first respondent is set aside.

(ii) The first respondent/Deputy Commissioner (ST) (FAC), 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.

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

03.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
1. The Deputy Commissioner, (ST)(FAC)
GST Appeal, Coimbatore,
Commercial Taxes Building,
Coimbatore-641 018.

2. The Assistant Commissioner (ST) (FAC),
Pollachi (Rural) Circle,
Pollachi-642 001.

Krishnan Ramasamy,J.,
jd

W.P.No.29067 of 2024

03.10.2024