IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29799 of 2024
and
W.M.P.Nos.32492 & 32495 of 2024

M/s.Nandha Maligai,
Represented by its Proprietor Mr.C.Pitchaimuthu,
No.26, Sandaipettai Street, Pallapatti,
Aravakurichi Taluk, Karur-639 205. ...Petitioner

Vs.

1. The Appellate Deputy Commissioner (ST),
GST-Appeal of Erode & Salem,
Integrated New Commercial Taxes Building, 3rd Floor,
S.F.No.400/1,7,8,46, Pudur B Village,
Erode-638 002.

2. The Deputy Commercial Tax Officer-1,
Karur-4 Assessment Circle,
Karur. ... 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 on the file of the 1st respondent in ROC.No.2021/2024/A1 dated 09.07.2024 confirming the assessment order dated 11.12.2023 passed by the 2nd respondent in Reference No.ZD331223064153W for the Tax period 2017-18 bearing GSTIN: 33BEFPP4370C1ZS and to quash the same as cryptic, illegal, arbitrary, wholly without jurisdiction and to direct the 1st respondent to entertain the petitioner's appeal and decide the same on merits.

For Petitioner : M/s.B.Mitra
For Respondents : M/s.Amirtapoonkodi Dinakaran, Government Advocate (Taxes)

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned order dated 09.07.2023 passed by the first respondent.

2. Ms.Amirtapoonkodi Dinakaran, 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 time of admission stage itself.

4. The learned counsel for the petitioner submitted that the intimation notice in Form GST DRC-01A dated 26.09.2023, show cause notice in Form GST DRC-01 dated 29.09.2023 and various reminder notices were raised on the petitioner's GST common portal, as the petitioner was unaware of the said notices uploaded in the GST common portal, it was failed to respond to the said notices/personal hearing, which led to the second respondent passing the order dated 11.12.2023. Further, he submitted that the physical version of such order

was not served on the petitioner. The petitioner came to know about the order dated 11.12.2023 passed by the second respondent only on account of recovery proceedings initiated against the petitioner. Being aggrieved over the said order dated 11.12.2023, the petitioner filed an appeal before the first respondent/Appellate Deputy Commissioner (S.T), Chennai, with a delay of 15 days and the same was rejected vide order dated 09.07.2024, on the ground that the appeal has been filed beyond the statutory period. He submitted that since the petitioner was not aware of the order dated 11.12.2023, 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. Ms.Amirtapoonkodi Dinakaran, learned Government Advocate (Taxes) appearing for the respondents, has stated 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 unaware of the order dated 11.12.2023, due to which, there was a delay of 15 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 15 days in filing the Appeal before the Appellate Authority.

8. Learned counsel on either side submitted that they will contest the case before the Appellate Authority. Under these circumstances, this Court is inclined to entertain this Writ Petition by remanding the matter to the Appellate Authority for passing appropriate orders.

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

(i) The delay of 15 days in filing the appeal before the Appellate Authority is condoned and the order dated 09.07.2024, passed by the first respondent/Appellate Deputy Commissioner (ST), GST Appeal is set aside.

(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.

04.10.2024

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

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