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W.P.No.29103 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.29103 of 2024 and
W.M.P.No.31766 of 2024

Tvl Ponnusamy

...Petitioner

Vs.

1. The Deputy Commissioner (ST) (FAC)

GST Appeal, Coimbatore,
Commercial Taxes Building,
Coimbatore-641 018.

2. The States Tax Officer (FAC)

Valparai Assessment Circle, Valparai -642127 ... 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 in his order M.P.No.836/2024 dated 04.07.2024 and quash the same as illegal and direct the First Respondent to take the appeal filed by the Petitioner on 25.02.2024 on record and decide it on merits in accordance with law.

For Petitioner : Mr.S.Ramanathan



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

ORDER

This Writ Petition has been filed, challenging the impugned order dated 04.07.2024 passed by the first respondent, quash the same as illegal and direct the first respondent to take the appeal filed by the Petitioner on 25.02.2024 on record and decide it on merits in accordance with law.

2. Mrs.K.Vasanthamala, learned Govt.Advocate (Taxes) takes notice on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

3. The learned counsel for the petitioner submitted that the second respondent had issued a notice dated 10.11.2020, stating that there is mismatch between GSTR-3B and GSTR-7 and proposed to levy tax of Rs.21,141/- under CGST and SGST respectively. Since the petitioner has not filed the reply, the second respondent has issued notice in Form GST DRC-01, dated 20.06.2022 proposing to levy tax of Rs.21,141/- under CGST and SGST respectively.

4. The learned counsel for the petitioner would also submit that the



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petitioner used to file returns through a part-time Accountant and he has no knowledge and access to the portal and thereby, he was not aware of the notices uploaded in the GST common portal, by which, he could not file the reply. However, without giving any personal hearing, the second respondent confirmed the proposal by levying tax of Rs.21,141/- under CGST and SGST respectively and also levied penalty of Rs.21,141/- and interest of Rs.11,781/- under CGST and SGST respectively vide impugned proceedings dated 18.08.2023.

5. The learned counsel would further submit that aggrieved by the impugned proceedings, dated 18.08.2023, the petitioner preferred an appeal before the first respondent on 25.02.2024 and explained the reasons for the delay in filing the appeal and requested to condone the same and entertain the appeal. However, the first respondent, vide order dated 04.07.2024, rejected the appeal stating that the order has been communicated to the petitioner on 18.08.2023 and the petitioner has time till 18.11.2023 and further one month time expired only on 18.12.2023, but the appeal was filed only on 25.02.2024 with a delay of 78 days, which is beyond the time limited prescribed under Section 107 of the GST Act. Therefore, the learned counsel would submit that since the petitioner was not aware of the impugned order, he was not able to



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file the Appeal within the time of limitation. He further submitted that though the impugned proceedings of the second respondent are 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.

6. Mrs.K.Vasanthamala, learned Govt.Advocate (Taxes) appearing for the respondents has no objection for condoning the delay and prays for appropriate orders.

7. Heard the learned counsel for the petitioner as well as the learned Govt.Advocate (Taxes) for the respondents and also perused the materials available on record.

8. In the present case, it appears that the petitioner was not aware of the order dated 18.08.2023 passed by the second respondent, due to which, there was a delay of 78 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



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delay of 78 days in filing the Appeal before the Appellate authority.

Accordingly, this Court passes the following order:-

(i) The delay of 78 days in filing the appeal before the appellate authority is condoned and consequently, the order dated 04.07.2024 passed by the first respondent is set aside;

(ii) The first respondent/Appellate Deputy Commissioner (ST) 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.

9. 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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Krishnan Ramasamy,J.,
jd

To

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