IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.30513 of 2024
and
W.M.P.No.33127 of 2024

M/s.V.V.Logistics
Rep. by its Proprietor Mr.Oppilamani Gopalakrishnan
No.5B, South Raja Street,
Alandur, Chennai- 600 016. ...Petitioner

Vs.

1. The Deputy Commissioner (Appeal),
GST Appeal, Chennai-II,
No.1, Greams road, Commercial Tax Offices,
Annex Building, Chennai- 06.

2. The Deputy Commercial Tax Officer (State),
Alandur Assessment Circle, South - III,
Integrated Commercial Taxes and Registration
Department (South Tower), Room No.352,
3rd Floor, Nandanam, Chennai-35. ... 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 of the 2nd Respondent in Ref.No.ZD3312231958960 dated 26.12.2023 and quash the same as illegal and consequentially remand back the matter to the 2nd Respondent for passing a fresh order after consideration of the explanation of the Petitioner.

For Petitioner : Mr.Malola Narasimhan V S

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader (Taxes)

ORDER

This Writ Petition has been filed challenging the order of the 2nd Respondent dated 26.12.2023 and quash the same as illegal and consequently remand back the matter to the 2nd Respondent for passing a fresh order after consideration of the explanation of the Petitioner.

2. Mr.T.N.C.Kaushik, learned Additional 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 case of the Petitioner is that initially the 2nd Respondent issued Show Cause to the Petitioner on 23.09.2023 and subsequently passed the exparte order on 26.12.2023 demanding tax with interest and penalty for the

Assessment Year 2017-2018, challenging which the Petitioner filed an Appeal before the 1st Respondent with a delay of 87 days. As enshrined under the Act and rules, the condonation of delay in preferring an Appeal beyond the time limits prescribed is negated and therefore the Petitioner is advised to seek condonation of delay of 87 days in preferring an Appeal against the impugned order. If the Appeal is not considered on merits, the Petitioner will be put to irreparable loss and hence this Petition.

5. The learned counsel for the Petitioner submitted that even if the delay is condoned and the Appeal is taken on file, substantial justice would not be met for the reason that in the case on hand no reply was filed by the Petitioner before the Assessing Officer and therefore he will lose the opportunity of filing reply before the Assessing officer and hence prays to give one more opportunity to them to file reply before the Assessing Officer to substantiate its case.

6. On the other hand, the learned Additional Government Pleader (Taxes) appearing for the Respondents submitted that the delay may be condoned and appropriate orders may be passed for disposal of the Appeal.

7. Heard the learned counsel on either side and perused the materials available on record.

8. In the case on hand, as rightly contended by the learned counsel for the Petitioner that even if the delay is condoned and Appeal is taken on record, he will lose an opportunity of filing its reply before the Assessing authority to substantiate its case and that apart, the impugned order was passed without hearing the Petitioner and therefore it is just and necessary to provide an opportunity to the petitioner to establish their case on merits.

9. In such view of the matter though there is justifiable grounds to condone the delay in preferring the Appeal, in the interest of justice and also in order to provide opportunity to the Petitioner to substantiate its case, this Court is inclined to set aside the impugned order of the 2nd Respondent dated 26.12.2023.

(i) The impugned order dated 26.12.2023 is set aside and the matter is remanded to the 2nd respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

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

17.10.2024

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

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Krishnan Ramasamy,J.,

arr

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