IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30917 of 2024
and
W.M.P.No.33496 of 2024

M/s.K R SETHUPATHI
Represented by its Proprietor, K R Setupathi
Having its registered office at
Door No:G1, Plot No.8, VGV Nagar,
Kannapalayam, Avadi, Chennai-600071. ... Petitioner

Vs.

1. The Deputy Commissioner of State Tax
Office of the Deputy Commissioner of State Tax
GST Appeals, Chennai-II, Main Building,
2nd Floor, Greams Road, Chennai-600006.

2. The Deputy Commercial/State Tax Officer - I
Office of the Deputy Commercial/State Tax Officer-I
Tiruvanmiyur Assessment Circle,
Integrated Registration and Commercial Taxes Building,
Nandanam, Chennai 600 035. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandaums to call for the records on the file of the 1st Respondent in the impugned order/Memorandum bearing RC No.1561/2024/A1 dated 01.08.2024, under the provisions of CGST Act, 2017 and quash the same and consequently direct the 1st Respondent to allow the Appeal filed and accordingly adjudicate the case on merits.

For Petitioner : Ms.Lavanya P R

For Respondent : Ms.Amritha Poonkodi Dinakaran
Government Advocate (Taxes)

ORDER

This writ petition has been filed challenging the impugned order dated 01.08.2024 passed by the 1st Respondent dated 01.08.2024.

2. Ms.Amirthapoonkodi Dinakaran, learned Government 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 admission stage itself.

3. The learned counsel for the petitioner would submit that the

Petitioner was engaged in the supply of works contract services to Government Departments and was registered under the Central Goods and Services Tax Act, 2017 vide GSTIN 33AUXPS6076P2ZC and the said GSTIN of the Petitioner was cancelled by the jurisdictional officers with effect from 01.12.2027 vide order of cancellation dated 10.12.2018 on account of non filing of GST returns. Subsequently, the Petitioner had obtained de novo registration under the CGST Act, 2017 and was assigned GSTIN 33AUXPS6076P3ZB. Thereafter the Petitioner was issued with Show Cause Notice dated 20.09.2023 followed by reminder notice dated 15.12.2023 through online. Since the same were uploaded in the old GSTIN which was already cancelled with effect from 01.12.2017, the Petitioner was not aware of the same and therefore could not file its reply. Under such circumstances 2nd Respondent has passed an exparte order dated 30.12.2023 demanding tax along with interest and penalty for the period from July 2017 to November 2017 and on the very same date passed the rectification order enhancing the demand. Since these orders were also uploaded in the earlier GSTIN, the Petitioner was not aware of the same. He came to know of the said notices and the orders only after getting phone call from the office of the 2nd Respondent. Thereafter, the Petitioner filed an Appeal along with condonation application before the 1st Respondent and the said authority has rejected the Appeal on the ground that the Appeal has been filed with a delay of 24 days and hence left with no other alternative the Petitioner has come up with this Writ Petition.

4. Further, he would submit that delay may be condoned and the matter may be remitted back to the 1st Respondent for passing appropriate orders.

5. The learned Government Advocate (Taxes) appearing for the respondents has stated no objection for condoning the delay and prays for appropriate orders.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and also perused the materials available on record.

7. In the present case, it appears since all the notices, communications and orders were uploaded in the earlier GSTIN of the Petitioner, which was cancelled with effect from 01.12.2017, the Petitioner was not aware of the same, due to which, there was a delay of 24 days in filing the appeal by the petitioner. Considering the same and also in view of the settled proposition of law that when substantial justice is pitted against technical consideration, credence should be given to the substantial justice, this Court is inclined to condone the delay of 24 days in filing the Appeal before the Appellate authority. Accordingly, this Court passes the following order:-

(i) The order dated 01.08.2024, passed by the 1st Respondent is set aside and and the delay of 24 days in filing the appeal before the said authority is condoned.

(ii) The 1st Respondent 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.

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

17.10.2024

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

1. The Deputy Commissioner of State Tax
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2. The Deputy Commercial/State Tax Officer - I
   Office of the Deputy Commercial/State Tax Officer-I
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KRISHNAN RAMASAMY.J.,

arr

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