BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4130 of 2024 and
WMP(MD)No.3987 of 2024

R Ponnarasu ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Deputy State Tax Officer -1,
Theni-2 Assessment Circle,
Commercial Taxes Office,
SIDCO Industrial Estate,
Madurai Road,
Theni-625 531. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned proceedings of the 2nd Respondent in ASMT-13 in GSTIN.33AIMPP2934N1ZS/Tax period July 23 dated 20.09.2023 and quash the same and pass such other or further orders as this Honble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioner : Mr.B.Rooban
For Respondent : Mr.A.Baskaran
Additional Government Pleader

O R D E R

The case of the petitioner is that he is a works contractor and failed to file the monthly returns in GSTR 3B for the month of July 2023 within the due date. Therefore, the second respondent has issued a notice dated 26.08.2023 under Section 46 of the TNGST Act,2017 directing the petitioner to file the returns for the month of July 2023 within a period of 15 days. Due to his ill-health, he could not file the returns within the time prescribed by the second respondent. Therefore, the second respondent has passed an order on 20.09.2023, assessing the petitioner under best of judgment and demanded the tax amount of Rs.4,50,000/-. The petitioner has filed the returns along with interest and late fee on 21.10.2023, i.e. on the 31st day from the date of receipt of the order. However, the second respondent is insisting the petitioner to pay the demand as per the order dated 20.09.2023. Hence, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner submits that as per Section 62(2) of the State Goods and Service Tax Act, 2017, if the assessee files the returns along with interest within 30 days from the date of receipt of the order, the best judgment assessment order shall be deemed to have been withdrawn. The provisions of Section 62(2) of the Act has been amended by extending the time limit for filing the returns from 30 days to 60 days and the said amended provisions came into effect on 01.10.2023. The learned counsel has relied on the order passed by the Principal Seat of this Court, in W.P.Nos.34770, 34774 and 34777 of 2023 dated 14.12.2023 and submits that in the above order, this Court has held that if there is sufficient cause for the delay in filing the returns, that delay can be condoned by the authority.

3.Mr.A.Baskaran, learned Additional Government Pleader takes notice for the respondents and submits that the returns have been filed on the 31st day the service of best judgement assessment order and therefore, the petitioner is not entitled for condonation of delay.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner has failed to file the monthly returns in GSTR 3B for the month of July 2023 in time. Therefore, notice was issued under Section 46 of the GST Act,2017 and best judgment assessment was made. The petitioner has paid the tax on the 31st day from the date of the best judgment assessment order . However, the respondents have insisted the petitioner to pay the demand as per the order passed by the second respondent under best Judgment assessment and demanded the tax. According to the petitioner, as per Section 62(2) of the GST Act, 2017 the time to file the returns has been extended to 60 days and the amendment was given effect from 01.10.2023. It is also to be noted that this Court has already decided the issue in W.P Nos.34770, 34774 & 34777 of 2023, dated 14.12.2023 and the relevant paragraphs are extracted as under:-

"14. Further, the respondent can make the best judgement assessment order within a period of 5

years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 31.03.2023, in which case, the petitioner is liable to file the annual returns on or before 31.12.2023. Therefore, the said period of 5 years to make the best judgement assessment order for the respondent will start on 01.01.2024 and ends on 31.12.2029. In such case, if the best judgement assessment order is passed by the respondent on 31.12.2029, which is permissible under Section 74 of the GST Act, the petitioner can file his returns within a period of 30 days therefrom i.e., on or before 30.01.2030. Hence, the time limit is available up to 30.01.2030 for the petitioner to file their returns. When such being the case, since the best judgement assessment order has been made by the respondent at the earliest point of time, the legal right of the petitioner to file the returns, which is available under Section 62 of the Act, cannot be taken away. If the best judgement assessment order has not been passed on the earlier date, the petitioner can file his returns even without paying any interest or penalty.

15.*Further, if the registered person was not able to file the returns within a period of 30 days for the reasons, which are beyond his control, the said delay may be condoned upon providing of sufficient reasons by the said person. Since Section 62 of the GST Act permits the person to file their returns as stated above, making the assessment at the earliest point of time and fixing the time limit of 30 days period will curtail the right, which is available for the Assessee.*

16.*In view of the above, the limitation of 30 days period prescribed under Section 62(2) of the Act appears to be directory in nature and if the Assessee was not able to file the returns for the reasons, which are beyond his control, certainly the said delay can be condoned and thereafter, the Assessee can be permitted to file the returns after payment of interest, penalty and other charges as applicable. At any cost, the right to file the returns cannot be taken away stating that the petitioner has not filed any returns within a period of 30 days from the date of best judgement assessment order. Thus, if any* *application is filed before the Authority concerned with sufficient reasons for non-filing of returns within the prescribed time limit as per section 62(2) of the Act, the same shall be considered on merits. If the Authority is satisfied with the said reasons, they can condone the delay and permit the petitioner to file the returns. However, in the present case, no such application was filed by the petitioner. Therefore, this Court is inclined to pass the following orders:*

(i) The petitioner is directed to file an application for condoning the delay in filing the returns within a period of 15 days from the date of receipt of copy of this order; (ii) Upon filing of the application for condonation of delay, the respondent is directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 30 days from the service of best judgement assessment order and thereafter, permit the petitioner to file the revised returns;

6.For better appreciation, Section 62 of the GST Act, 2017 is extracted as under:-

"62. Assessment of non-filers of returns:-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within five years from the date specified under section n 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or payment of late fee under section 47 shall continue".

7.In view of the above, this writ petition is allowed with a direction to the petitioner to file an application to condone the delay in filing the returns within15 days from the date of receipt of a copy of this order. On such filing of an application by the petitioner, the respondents are directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 30 days from the service of best judgement assessment order and thereafter, permit the petitioner to file the revised returns. No costs. Consequently, connected Miscellaneous Petition is closed.

28.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes
vrn

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Deputy State Tax Officer -1,
Theni-2 Assessment Circle,
Commercial Taxes Office,
SIDCO Industrial Estate,
Madurai Road,
Theni-625 531.

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.4130 of 2024 and
WMP(MD)No.3987 of 2024

28.02.2024