BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8320 of 2024
and
W.M.P.(MD)Nos.7531 & 7532 of 2024

S.Brithivirajan ... Petitioner

Vs.

1.Joint Commissioner (ST),
Tirunelveli Region,
Commercial Tax Department,
A.R. Line Road, Palayamkottai,
Tirunelveli - 627 002.

2.Deputy Commissioner (ST),
GST Appeal, Madurai & Tirunelveli,
O/o. Joint Commissioner (ST),
Commercial Tax Department,
A.R. Line Road, Palayamkottai,
Tirunelveli - 627 002.

3.Deputy Commissioner (ST),
Thoothukudi Region,
Commercial Tax Department,
Beach Road,
Thoothukudi - 628 001.

4.State Tax Officer,
Tiruchendur Commercial Tax Office,
Commercial Tax Department,
Market Road, Tiruchendur - 628 215. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relates to the impugned order in DR.No.1098 of 2022 of the second respondent, dated 01.02.2023, quash the same as illegal, null and void and against natural justice and consequently, directing the fourth respondent to reassess the returns for the returns for the Assessment Year 2018-2019.

For Petitioner : Mr.B.Ramkumar Adityan
for Mr.S.Sankar

For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

This Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, to quash the impugned order of the second respondent, dated 01.02.2023, in DR.No.1098 of 2022, and consequently, directing the fourth respondent to reassess the returns for the Assessment Year 2018-2019.

2. The petitioner has suffered an adverse order in the hands of the fourth respondent on 04.08.2022 for the assessment year 2018-2019. Pursuant to the assessment order dated 04.08.2022, the petitioner was issued with demand notice dated 04.08.2022, which has culminated in recovery of a sum of Rs.11,53,720/-. The petitioner has filed the appeal before the second respondent beyond 24 days of condonable period of limitation in terms of Section 107(4) of the Tamil Nadu Goods and Service Tax Act, 2017 [hereinafter referred to as "the TNGST Act"]. The petitioner has deposited Rs.1,15,372/- towards pre-deposit. The limitation for filing the appeal expired on 03.11.2022 [being the 90th day from 04.08.2022]. The further period of 30 days under Section 107(4) of the TNGST Act being the condonable period for filing the appeal expired on 03.12.2022. The appeal was filed by the petitioner before the second respondent on 27.12.2022 beyond 24 days of the condonable period of limitation under Section 107(4) of the TNGST Act.

3. Having considered the submissions of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, this Court is of the view that substantiative right of the petitioner to redress his grievance by way of appeal cannot be curtailed particularly, when the amount due towards tax liability has been recovered from the petitioner on 01.12.2022. Over and above, the petitioner has also paid a sum of Rs.1,15,372/- on 27.12.2022 along with the appeal filed beyond the condonable period of limitation under Section 107 (4) of the TNGST Act.

4. Be that as it may, since the appeal has been filed along with the pre-deposit on 27.12.2022 and considering the fact that a sum of Rs.11,53,720/- has already been recovered from the petitioner on 01.12.2022, this Court is of the view that it is a fit case, for a direction to the second respondent to consider the appeal and dispose of the same. Therefore, the second respondent is directed to consider the appeal and dispose of the same on merits without reference to the period of limitation.

5. This Writ Petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.04.2024

Index : Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
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To

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C.SARAVANAN, J.

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