IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.4316 of 2025
and
W.M.P.Nos.4830 and 4831 of 2025

Tvl.Versatile Marketing,
Rep. by its Proprietor,
Bhaskaran Srividhya,
Old No.28, New No:70,
First Floor, C.I.T. Nagar Fourth Main Road,
Nandanam, Chennai- 600 035. ... Petitioner

Vs.

1.The Deputy Commissioner (CT)
GST- Appeal Chennai II
Greams Road Chennai 600 006.

2. The Assistant Commissioner (ST),
Nandanam Assessment Circle,
No:46, Pasumpon Muthuramalingam Salai,
R.A.Puram, Chennai- 600 028. ... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in GSTIN:33AAGFV9168A1Z5/2017-2018 dated 23.10.2024 on the file of the 1st respondent and quash the same as illegal and consequentially direct the 1st respondent to restore the appeal filed by the petitioner on 03.05.2024 and pass orders on merit by providing an opportunity of personal hearing.

For Petitioner : Mr.A.Thiyagarajan
Senior Counsel
for Mr.S.Karunakar

For Respondents : Mr.M.Venkateshwaran
Special Government Pleader (Taxes)

ORDER

This writ petition has been filed challenging the impugned order dated 23.10.2024 passed by the 1st Respondent and quash the same and consequently direct the 1st respondent to restore the appeal filed by the petitioner on 03.05.2024 and pass orders on merit by providing an opportunity of personal hearing.

2. Mr.M.Venkateshwaran, learned Special Government Pleader (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.

4. The learned counsel for the Petitioner submitted that all notices/communications were uploaded under the "View Additional Notices and Orders" in the GST portal. However, the petitioner is not aware of the notices uploaded in the GST portal and thus, failed to file their reply within the time. While so, without providing any opportunity to the petitioner, the 2nd respondent passed the assessment order dated 28.12.2023, demanding the payment of tax along with penalty and interest for the Assessment Year 2017-2018. After coming to know of the impugned order, the petitioner immediately filed an appeal on 03.05.2024 which was rejected by the 1st Respondent vide order dated 23.10.2024, on the ground of delay. Challenging which, this Writ Petition has been filed.

5. Further, he would submit that since the petitioner's consultant was ill at the relevant point of time, the petitioner could not file an Appeal within 120 days and hence there was a delay of 36 days. He therefore requested this Court to condone the delay and direct the 1st respondent to dispose of the appeal within the stipulated period.

6. The learned Special Government Pleader (Taxes) appearing for the respondents would submit that since the 1st respondent has no power to condone the delay beyond 120 days, the appeal filed by the petitioner came to be rejected. Further, he stated no objection for this Court to condone the delay and prayed for appropriate orders.

7. Heard both sides and also perused the materials available on record.

8. In the present case, it was stated by the petitioner that due to the ill health of the petitioner's consultant, the petitioner could not file appeal within time and hence prayed for appropriate orders.

9. Considering the aforesaid facts and 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 set aside the impugned order passed by the 1st respondent dated 23.10.2024 is set aside and condone the delay of 36 days in filing the Appeal before the 1st Respondent. Accordingly, this

Court passes the following order:-

(i) Accordingly, the impugned order dated 23.10.2024 passed by the 2nd respondent is set aside and the delay of 36 days in filing the appeal before the 1st respondent is condoned.

(ii) The 1st respondent is directed to take the appeal on record and pass appropriate orders on merits and in accordance with law, after providing sufficient opportunity to the petitioner, as expeditiously as possible.

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

07.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,

arr

To

1.The Deputy Commissioner (CT)

GST- Appeal Chennai II
Greams Road Chennai 600 006.

2. The Assistant Commissioner (ST),
Nandanam Assessment Circle,
No:46, Pasumpon Muthuramalingam Salai,
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