IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No. 5574 of 2025
and
W.M.P.No.6154 of 2025

M/s.Chowatia Metal Alloys
rep. By its Sole Proprietor, Vimiaben Chowatia. ...Petitioner

Vs.

1. The Commissioner of GST
and Central Excise (Appeals) II
Newry Towers, 2nd Floor, No.2054,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

2. The Deputy Commissioner (ST)
GST Appeal Chennai -I,
3rd Floor, CT Annexe Building No.1
Greams Road, Chennai – 600 006.

3. The Assistant Commissioner (ST)
Broadway Assessment Circle
Integrated Commercial Taxes Building
No.32, Elephant Gate Bridge Road,
Chennai – 600 003. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records in the proceedings having number R.C.No.1718/2024 dated 03.05.2024 on the file of the second respondent and to quash the same as arbitrary and to direct the second respondent to admit the Appeal dated 02.04.2024 filed against the order of the third respondent in GSTIN : 33AAEPC4583G1Z0/2018-19 dated 06.10.2023, before the second respondent.

For Petitioner : Mr.RP.Vijayakrishnan

For Respondent-1 : Mr.Sai Srujan Tayi,
Senior Standing Counsel
assisted by Ms.Pooja Jain,
Junior Standing Counsel

For Respondents-2 & 3 : Mrs.K.Vasanthamala
Government Advocate (T)

Order

Heard Mr.RP.Vijayakrishnan learned counsel appearing for the petitioner and Mr.Sai Srujan Tayi, learned Senior Standing Counsel assisted by Ms.Pooja Jain, learned Junior Standing Counsel who takes notice on behalf of the respondent No.1 and Mrs.K.Vasanthamala, learned Government Advocate (T), who takes notice on behalf of the respondents 2 and 3. With consent, the main Writ Petition is taken up for final disposal at the stage of admission ittself.

2. The challenge in this Writ Petition is to the order passed by the second respondent dated 03.05.2024 and to direct the second respondent to admit the Appeal dated 02.04.2024 filed against the order of the third respondent dated 18.08.2023.

3. The learned counsel for the petitioner would submit that as against the order passed by the third respondent dated 06.10.2025, the petitioner preferred an Appeal, however, same came to be dismissed by the Appellate Authority/second respondent on the ground of delay. The learned counsel justified the reason for the delay by stating that, show cause notice was issued by the respondent-Department on 08.09.2023, calling forth petitioner's objections/reply on 08.10.2025, however, within the said time limit, the impugned assessment order came to be passed on 06.10.2025, i.e. two days before itself, therefore, aggrieved by the said order, the petitioner filed a Rectification Application before the third respondent, however, the same came to be rejected on 14.03.2024, thereafter, the petitioner preferred Appeal on 02.04.2024, however, in doing so, there happened to be a delay of two months. Therefore, the learned counsel prays for appropriate orders.

4. The learned Government Advocate (T) for the respondents 2 and 3 would submit that since the Appeal was filed by the petitioner beyond the condonable period of delay, the same was rightly rejected by the second respondent.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the case on hand, it is seen that a show cause notice was issued by the third respondent, 08.09.2023, calling for petitioner's reply on or before 08.10.2025, however, before the petitioner could file reply within the time prescribed in the show cause notice, the impugned assessment order came to be passed, i.e on 06.10.2023 itself. Thus, it is clear that the order passed by the third respondent is an ex parte orders and suffers from violation of principles of natural justice. Therefore, the petitioner, aggrieved by the said assessment order dated 06.10.2023, filed a Rectification Petition pointing out the error that is apparent on the face of record. However, the third respondent vide order dated 14.03.2023, rejected the Rectification

Application. Thereafter, the petitioner filed an Appeal challenging the order of the third respondent dated 06.10.2023, before the Appellate Authority/second respondent, however, in doing so, there happened to be a delay of two months.

6.1 Thus, this Court, in the light of the aforesaid facts of the case, is inclined to condone the delay, as the reasons assigned by the petitioner for condonation of delay appears to be genuine, however, subject to payment of additional 5% of the disputed tax. Accordingly, this Court is inclined to pass/issue the following order/direction:-

i) The delay in filing the Appeal is condoned.

ii) The impugned order passed by the second respondent/Appellate Authority is set aside, however, the same is subject to the condition that the petitioner deposits 5% of the disputed tax within a period of four weeks days from the date of receipt of a copy of this order.

iii) Upon production of proof with regard to the payment made by the petitioner, the second respondent/Appellate Authority is directed to take up the Appeal filed by the petitioner dated 02.04.2024 on file and dispose of the same in accordance with law, without raising any ground on limitation.

7. In the result, the Writ Petition is allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

28.03.2025

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Index : yes/no
Neutral Citation : yes/no

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