IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.02.2025
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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.6833 of 2025
and
W.M.P.Nos.7529 & 7530 of 2025

M/s. Bhavani Agro Agencies,
Sole Proprietorship
Rep. By Nangappagounder Mohanraj. ...Petitioner

Vs.

1. The Deputy Commissioner (Commercial Tax) (FAC)
   Goods and Service Tax (Appeal)
   Appellate Authority,
   17, Pitchardsroad,
   Hasthampatty, Salem -636 007.

2. The Commercial Tax Officer,
   State Tax Officer, Erode,
   I, Brough Road, Erode -638 001. ...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 of the impugned summary order in Form DRC-07 vide Ref.No. ZD3310231597541 dated 26.10.2023 passed by the second respondent and the subsequent dismissal of the impugned appeal order dated 25.10.2024 vide Ref.No.ZD331024198763A passed by the first respondent and to quash the same as arbitrary, against principles of natural justice and total inconformity with the provisions of the GST Act, 2017, and consequently, to direct the first respondent to hear the appeal filed by the petitioner on merits.

For Petitioner	:	M/s.R.Reshma
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate (T)

Order

Heard M/s.R.Reshma, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (T) who takes notice on behalf of the respondents. With consent, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The challenge in this Writ Petition is to the summary order in Form DRC-07 dated 26.10.2023 passed by the second respondent and the subsequent dismissal of the impugned appeal order dated 25.10.2024 passed by the first respondent and to quash the same, and consequently, to direct the first respondent to hear the appeal filed by the petitioner on merits.

3. The learned counsel for the petitioner would submit that the second respondent has issued a notice in Form GST DRC-01A on 06.12.2022, calling for petitioner's explanation/reply, which was subsequently followed by a show cause notice dated 08.02.2023, in Form GST DRC-01, calling upon the petitioner to appear for personal hearing, and reminder notice dated 05.09.2023; that since none of the communications, mentioned above, which culminated in the impugned order were served on the petitioner through physically but were merely uploaded in the GST portal through on-line, the petitioner was totally unaware of the same, apart from the same, since the petitioner has applied for GST cancellation, whereby, the respondent-GST Department cancelled the registration w.e.f. 31.10.2017, the petitioner has not followed the on-line, and only when the petitioner's bank account came to be attached, the petitioner, upon investigation from the bank officials came to be know of the recovery proceedings initiated by the respondent-GST Department in pursuance of the impugned proceedings; that though the petitioner aggrieved by the impugned order challenged the same by way of Appeal before the Appellate Authority by making a pre-deposit of 10% of the disputed tax, the first respondent/Appellate Authority has dismissed the appeal vide the impugned order 25.10.2024 on the ground of delay of 154 days.

3.1 Therefore, the learned counsel would submit that the impugned orders suffers from violation of principles of natural justice and are liable to be aside. It is further submitted that the petitioner is ready and willing to deposit 15% of the disputed tax, in the event, this Court is inclined to set aside the impugned orders and issued appropriate directions in that regard.

4. The learned Government Advocate (T) for the respondent fairly submitted that since the petitioner has already deposited 10% of the disputed tax while preferring appeal and has now voluntarily came forward to deposit 15% of the disputed tax, this Court may pass appropriate orders, as it deems fit and proper.

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

6. Admittedly, there is no dispute on the aspect that the impugned Assessment Order passed by the second respondent dated 26.10.2023 is an ex parte order, as the petitioner has not been heard before passing the same, since, all the notices/communications, which culminated in the impugned assessment order have been merely uploaded in the GST Portal through on-line service and have not been served on the petitioner through physical mode, the same were unnoticed by the petitioner. That apart, the petitioner's GST Registration was also cancelled by the respondent-GST Department wayback in the year 2017 itself pursuant to the request made by the petitioner, hence, certainly, the petitioner would have had no occasion to follow the GST communications. However, when the petitioner challenged the impugned assessment order and preferred Appeal, the first respondent/Appellate Authority dismissed the Appeal on the ground that the same has been filed with a delay of 154 days, which necessitated the petitioner to approach this Court.

6.1 Therefore, in the light of the above facts and circumstances of the case, this Court is inclined to set aside both the impugned assessment order passed by the second respondent/assessing officer, as the same suffers from violation of principles of natural justice and the order of dismissal of the Appeal passed by the Appellate Authority/first respondent, (since, he has no power to condone the delay beyond the period of 30 days). Further, considering the fact that the petitioner is also ready and willing to pay 15% of the disputed tax, in the event, the impugned assessment order is set aside, this Court is inclined to issue/pass following orders/directions:-

i) The impugned order dated 26.10.2023 passed by the second respondent and the order passed by the first respondent/Appellate Authority dated 25.10.2024 are set aside.

ii) Consequently, the matter is remanded to the second respondent for fresh consideration.

iii) The petitioner is granted liberty to deposit 15% of the disputed tax, which the petitioner themselves have voluntarily came forward to make such payment within a period of two weeks from the date of receipt of a copy of this order.

iv) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

v) Thereupon, the second respondent is directed to consider the reply and shall issue a clear 14 days notice affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

vi) So far as the bank attachment order is concerned, it is needless to state that, once the impugned order is set aside, the attachment order can no longer survive and the same has to be given a go-by by the respondent-Department. Hence, the respondent-Department is directed to issue appropriate direction on the petitioner's banker towards de-freezure of the petitioner's bank account forthwith.

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

27.02.2025

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Index : yes/no

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Krishnan Ramasamy,J.,

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