IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.03.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.7489 of 2025
& W.M.P.Nos.8389 & 8390 of 2025

M/s.Vivek Traders LLP,
Rep by Jithender Tatia, Partner,
320, 3, Valluvar Kottam High Road,
Nungambakkam, Chennai

... Petitioner

Vs.

1.The Commercial Tax Officer,
Chennai Central, Chennai

2.The Assistant Commissioner,
Valluvarkottam, Central III,
Chennai Central, Chennai

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the 2nd respondent in Ref.No.ZD3304241894391 dated 24.04.2024 relating to tax period 2018-19 and quash the same as being arbitrary and without jurisdiction and hence invalid and illegal.

For Petitioner : Mr.V.Srikanth

For Respondent : Ms.Amirta Poonkodi Dinakaran, Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 24.04.2024 passed by the 2nd respondent.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, 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.

3. The learned counsel for the petitioner would submit that in this case, initially, the show cause notice in DRC-01 dated 06.12.2023 was issued by the 1st respondent, whereby they had covered 5 issues. Simultaneously, on 26.12.2023, another DRC-01 notice was issued by the 2nd respondent, whereby they had covered one of the major issues,

which was already mentioned in the previous show cause notice along with 4 other different issues.

4. Further, he would submit that objections with regard to the 1st show cause notice dated 06.12.2023 had been filed by the petitioner on 18.03.2024 and thereafter, the proceedings were dropped by the 1st respondent vide order dated 27.03.2024. Under these circumstances, the petitioner was under the impression that no further proceedings will be initiated by the 2nd respondent and hence, they had not filed any reply for the 2nd show cause notice. At this juncture, the impugned order came to be passed by the 2nd respondent on 24.04.2024.

5. He would also submit that he had filed a rectification application, against the impugned order, by pointing out the common proposal made by the respondents in both the show cause notices. However, the rectification application was rejected by the 2nd respondent vide the order dated 27.01.2025. In the meantime, the time limit for filing the appeal against the impugned order was expired. Hence, he

seeks liberty of this Court to file an appeal against the said impugned order.

6. The learned Government Advocate appearing for the respondent had strongly opposed for setting aside of the impugned order and would contend that though sufficient opportunities were provided, the petitioner had voluntarily failed to file reply for the show cause notice dated 26.12.2023 issued by the 2nd respondent. Hence, she requests this Court to dismiss the present petition. Further, she would submit that the impugned order came to be passed by the 2nd respondent as early as on 27.04.2024 and hence, the time limit for filing the appeal, against the said impugned order, was expired. Therefore, she requests this Court to pass appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and also perused the materials available on record.

8. In the case on hand, two show cause notices were issued to the petitioner on 06.12.2023 and 26.12.2023 by covering one common issue along with other different issues. The petitioner had filed their reply/objection for the 1st show cause notice and subsequently, the proceedings were dropped by the 1st respondent vide order dated 27.03.2024. Hence, according to the petitioner, they were under the impression that no further proceedings will be initiated by the respondents, due to which, they failed to file any reply for the 2nd show cause notice dated 26.12.2023. Under these circumstances, the impugned order dated 24.04.2024 came to be passed by the 2nd respondent.

9. This Court is unable to accept the above reason assigned by the petitioner for non-filing of reply, since the 2nd show cause notice dated 26.12.2023 was not only issued for one common issue, which was covered vide earlier show cause notice dated 06.12.2023, but also for other 4 different issues. In such case, it is the duty of the petitioner to file a reply to the 2nd show cause notice dated 26.12.2023, which was issued

by the 2nd respondent. However, they had failed to do so and hence, it is clear that in spite of the issuance of show cause notice, due to the inaction on the part of the petitioner, they had given up their rights for filing of reply in this case. When such being the case, this Court is not inclined to entertain this writ petition.

10. Further, it appears that the petitioner had not filed any appeal against the impugned assessment order due to the pendency of rectification application, which was rejected vide the order dated 27.01.2025. Therefore, though the larger relief is sought for in this petition, he had restricted his relief to the extent to request this Court to grant liberty to the petitioner to file an appeal since it will be suffice to meet out his case.

11. In view of the above, this Court feels that it would be appropriate to provide an opportunity to the petitioner to file an appeal against the impugned assessment order. Therefore, though the limitation was expired, in the interest of justice, this Court is inclined to condone

the delay in filing the appeal against the impugned assessment order on terms. Accordingly, this Court passes the following order:

(i) Accordingly, the delay in filing the appeal before the concerned Appellate Authority is hereby condoned, subject to the payment of 15% of the disputed tax amount (10% towards statutory pre-deposit for filing appeal + 5% towards additional deposit) by the petitioner to the respondent-Department.

(ii) Upon payment of the said amount, the concerned Appellate Authority is directed to take the appeal on record and pass appropriate orders on merits and in accordance with law, after providing an sufficient opportunity to the petitioner, as expeditiously as possible.

11. In the result, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petitions are also closed.

10.03.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,

nsa

To

1.The Commercial Tax Officer,
Chennai Central, Chennai

2.The Assistant Commissioner,
Valluvarkottam, Central III,
Chennai Central, Chennai

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