IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.9434 of 2025
and
W.M.P.Nos.10599 and 10600 of 2025

Tvl.Sri Vishnu Agency,
Rep. by its Partner
E-4 Part,Kattiganapalli
Semmandapatty Post,
Krishnagiri-635 001. ... Petitioner

Vs.

1.Deputy Commissioner (CT),
Salem.

2. Assistant Commissioner (ST)
Krishnagiri-I Circle. ... 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 relating to the rejection of appeal in FORM GST APL-02 bearing Reference No.ZD330225163293N dated 17.02.2025 issued by the 1st respondent and quash the same and thereby direct the 1st

Respondent to take the appeal filed by the petitioner against order in Reference No.ZD330424257781D dated 30.04.2024 passed by the 2nd Respondent on record and dispose the appeal on merits.

For Petitioner : Mr.T.Ramesh

For Respondents : Mr. V.Prashanth Kiran
Government Advocate
(Taxes)

ORDER

This writ petition has been filed challenging the impugned order dated 17.02.2025 passed by the 1st Respondent and quash the same and thereby direct the 1st Respondent to take the appeal filed by the petitioner against order dated 25.09.2024 passed by the 2nd Respondent on record and dispose the appeal on merits.

2. Mr.V.Prashanth Kiran, learned Government Advocate (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.

3. The learned counsel for the Petitioner submitted that initially

the 2nd respondent issued a show cause notice dated 28.12.2023 to the petitioner, for which the petitioner submitted its reply on 12.02.2024. But the 2nd respondent without considering the reply filed by the petitioner has passed the assessment order dated 30.04.2024, demanding the payment of tax along with penalty and interest for the Assessment Year 2018-2019. Since the petitioner's partner sustained contusion injury to the foot and was under medical treatment, the petitioner could not file an appeal within the period of limitation. However,after recovery of its partner, the petitioner filed an appeal before the 1st respondent with a delay of 195 days and the same was rejected by the 1st Respondent vide order dated 17.02.2025, on the ground of delay. Being aggrieved over the same, the petitioner filed this writ petition.

4. The learned counsel for the petitioner would submit that the petitioner could not be file appeal within time, due to unforeseen circumstances as stated above and hence requested this Court to condone the delay and direct the 1st respondent to dispose of the appeal within the stipulated period.

5. The learned Government Advocate (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 would submit this Court may condone the delay subject to terms.

6. In reply, the learned counsel for the petitioner would submit that the petitioner has already deposited 10% of the disputed tax at the time of filing appeal and now ready to deposit another 5% of disputed tax before the authority concerned.

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 health condition of the petitioner's partner, the petitioner could not file appeal within time and that apart now the petitioner is ready to deposit

5% of disputed tax before the authority concerned.

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 17.02.2025 and condone the delay of 194 days in filing the Appeal before the 1st Respondent. Accordingly, this Court passes the following order:-

(i) Accordingly, the impugned order dated 17.02.2025 passed by the 1st respondent is set aside and the delay of 194 days in filing the appeal before the 1st respondent is condoned subject to payment of 5% of disputed tax demand before the 1st respondent.

(ii) On such payment being made, 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.

20.03.2025
(2/2)

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

1.Deputy Commissioner (CT),
Salem.

2. Assistant Commissioner (ST)
Krishnagiri-I Circle.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.9434 of 2025

20.03.2025