IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.9787 of 2025
and
W.M.P.Nos.10970 and 10971 of 2025

Shree Bajaj Tiles,
Represented by its Proprietor
T.Rajesh
No.23/90C, Tiruchengode Road,
Namakkal-637001 ... Petitioner

..Vs..

1. Assistant Commissioner (ST)
Namakkal Town
Integrated Commercial Taxes Building
1st Floor BSNL-Opp Mohanur Road,
Namakkal 637001.

2. Deputy Commissioner (ST) GST
Salem and Erode
Commercial Taxes Building
Pitchards Road, Salem. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the impugned order of the first respondent passed in GSTIN:33AATPR1033R1Z4/2022-23 dated 19.07.2024 and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mrs.K.Vasanthamala
Government Advocate (Taxes)

ORDER

The challenge in this writ petition is to the order dated 19.07.2024 passed by the 1st respondent and to quash the same.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes), takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the time of admission stage itself.

4. The learned counsel for the petitioner submits that ASMT 10 Notice dated 11.03.2023 and the show cause notice dated 17.08.2023 were issued to the petitioner by uploading the same in the GST portal, without serving it through physical mode. Since the petitioner's accountant failed to notice the said notices, the petitioner failed to submit its reply. Subsequently,

the respondent passed the impugned assessment order dated 19.07.2024, demanding tax along with interest and penalty for the Assessment Year 2022-2023 and the same was also uploaded in the GST Portal. The petitioner came to know of the impugned assessment order only after receiving the call from the first respondent. Immediately, the petitioner filed an appeal before the 2nd respondent by making a pre-deposit of 10% and the same was rejected on the ground of limitation and hence left with no other alternative the petitioner has filed this writ petition challenging the impugned assessment order.

5. Further, he would submit that impugned assessment order came to be passed without affording an opportunity of personal hearing to the Petitioner and therefore the same is passed in violation of principles of natural justice. He further submitted that even if the delay is condoned and the Appeal is taken on file, substantial justice would not be met for the reason that in the case on hand no reply was filed by the Petitioner before the Assessing Officer and therefore he will lose the opportunity of filing reply before the Assessing officer and hence prays to give one more opportunity to them to file reply before the Assessing Officer to substantiate its case.

6. The learned Government Advocate (Taxes) appearing for the Respondent submitted that though the ASMT Notice as well as the Show Cause Notice notice were issued to the Petitioner, by uploading the same in the GST portal, the petitioner neither failed to submit its reply and hence impugned assessment order came to be passed. Further, he would submit that since the Appeal was filed before the 1st respondent with a delay of 10 days i.e., beyond condonable period, the Appeal came to be rejected on the ground of limitation. However, he fairly submitted that the matter may be remanded back to the assessing authority instead of appellate authority subject to terms.

7. In reply, the learned counsel for the petitioner would submit that since already 10% of the disputed tax liability has been deposited by the petitioner at the time of filing appeal, the petitioner is now ready and willing to pay 15% of the disputed tax liability made by the 1st respondent in the event of providing an opportunity to them to file their reply along with the required documents to substantiate their claim, for which, the learned Government Advocate (Taxes) appearing for the Respondent has no serious objection.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the Respondent and also perused the materials available on record.

9. In the case on hand, since all the notices were uploaded in the GST portal and as the petitioner's accountant failed to notice the same, the petitioner was unaware of the same and hence could not file its reply. Under such circumstances impugned assessment order came to be passed. As rightly contended by the learned counsel for the Petitioner that even if the delay is condoned and Appeal is taken on record, the petitioner will lose an opportunity of filing its reply before the Assessing authority to substantiate its case and that apart, the impugned order was passed without hearing the Petitioner and therefore it is just and necessary to provide an opportunity to the petitioner to establish their case on merits.

10. In such view of the matter though there is justifiable grounds to condone the delay in preferring the Appeal, in the interest of justice and also in order to provide opportunity to the Petitioner to substantiate its case, this Court is inclined to set aside the impugned order of the 1st Respondent dated 19.07.2024.

(i) The impugned order dated 19.07.2024 is set aside and the matter is remanded to the 1st Respondent for fresh consideration on condition that as volunteered by the Petitioner, they shall pay 15% of disputed tax to the Respondent within a period of ***four weeks*** from the date of receipt of a copy of this order and the setting aside of the impugned order will take effect from the date of payment of the said amount.

(ii) The Petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

11. Accordingly, the writ petition is disposed of. There is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

19.03.2025

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

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Krishnan Ramasamy,J.,

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