IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.03.2025

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.10784 of 2025
and
W.M.P.Nos.12137 and 12139 of 2025

M/s Jarv Tools
Represented by its Proprietor
Mr. Raj Vijaykumarpaul
Having business at 98/10 Tiny Plot ,
Industrial Estate, Thirumudivakkam,
Kancheepuram, Tamil Nadu 631 604
... Petitioner

Vs.

1. Assistant Commissioner (ST)
Guindy Assessment Circle
Room No 255, SecondFloor, Integrated Commercial Taxes and
Registration South Tower, Nandanam
Chennai- 600 035

2. Deputy Commissioner CT GST Appeal
Room No. 253 and 255, Second Floor
Integrated Commercial Taxes and Registration Building
South Tower, Nandanam
Chennai-600 035.
... 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 on the file of the 2nd Respondent of Order in Reference No AD330924002344F passed under Section 107 of the TNGST Act, 2017 dated 23.10.2024 for the FY 2018-19 passed by the 2nd Respondent and quash the same as illegal and not in accordance with law and consequently direct the 2nd Respondent to conduct fresh assessment proceedings after providing a reasonable opportunity of hearing to the Petitioner in accordance with law.

For Petitioner : Ms.Vandana Vyas
for Mr.Sivaraman R

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

ORDER

This writ petition has been filed challenging the impugned order dated 23.10.2024 passed by the 2nd Respondent and to quash the same.

2. Mrs.K.Vasanthamala, 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 the 1st respondent issued show cause notice dated 31.01.2024 to the petitioner by uploading the same in the "Additional Notice" column instead of "Notice" column of the GST portal. Therefore, the petitioner was not aware of the same and hence failed to file its reply. Subsequently, the 1st respondent passed the assessment order dated 23.10.2024, against the petitioner demanding the payment of tax along with penalty and interest for the Assessment Year 2018-2019. Immediately, the petitioner handed over the assessment order to the accountant for filing the appeal. However since the accountant left the office without giving any intimation to the petitioner, it was not possible for the petitioner to file an appeal within the due date and they filed the appeal with delay of 29 days. However, the same was rejected by the 2nd Respondent vide order dated 23.10.2024, 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 the reason that the accountant of the petitioner Firm to whom the petitioner entrusted the work of filing the appeal left without any intimation. Therefore, he 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 the period of limitation, 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 over and above the 10% 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 since the accountant of the petitioner Firm to whom the petitioner entrusted the work of filing the appeal left without any intimation, the petitioner could not file appeal within time and that apart now the petitioner is ready to deposit 5% of disputed tax over and above 10% 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 23.10.2024 and condone the delay of 29 days in filing the Appeal before the 2nd Respondent. Accordingly, this Court passes the following order:-

(i) Accordingly, the impugned order dated 23.10.2024 passed by the 2nd respondent is set aside and the delay of 29 days in filing the appeal before the 2nd respondent is condoned subject to payment of 5% of disputed tax demand before the 2nd respondent.

(ii) On such payment being made, the 2nd 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.

26.03.2025

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

1. The Deputy Commissioner (CT),
   GST Appeals, Commercial Tax Office Buildings,
   Hasthampatti, Pitchads Road, Salem-636 007.

2. The Assistant Commissioner (ST),
   Krishnagiri-II Assessment Circle,
   Krishnagiri-635 115.

KRISHNAN RAMASAMY.J.,

arr

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