IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :26.03.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.10539 of 2025
and
W.M.P.Nos.11859 & 11860 of 2025

Tvl. Krishna Impex
rep. by its Proprietor Mr.Ravindranath Pamulapati
...Petitioner

Vs.

1. The Deputy Commissioner (CT)
GST Appeals, Chennai – I,
Greams Road, Chennai – 600 006.

2. The Deputy State Tax Officer,
Cholavaram Assessment Circle,
Integrated Commission Taxes Building No.32,
Elephant Gate Bridge Road, Chennai – 600 003. ...Respondents

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records of the second respondent in demand order dated 19.12.2023 in GSTIN : 33AAGFK7996P1ZD/2017-18 in demand ref.No.ZD33123139806H in Form GST DRC-07 and the consequential rejection of Appeal order dated 18.10.2024 in Form GST Apl-02 in Ref.No.ZD3310241226556T passed by the first respondent and to quash the same as illegal

For Petitioner : M/s.C.Rekha Kumari
For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader (T)

Order

Heard M/s.C.Rekha Kumari, learned counsel appearing for the petitioner and Mr.T.N.C.Kaushik learned Additional Government Pleader (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 order passed by the second respondent dated 19.12.2023 in Form GST DRC-07 and the consequential rejection of Appeal order dated 18.10.2024 in Form GST Apl-02 passed by the first respondent and to quash the same.

3. The learned counsel for the petitioner would submit that second respondent has uploaded DRC-01A, DRC-01, reminders and the impugned order dated 19.12.2023, vide GST Portal, instead of serving all those notice in person, hence, the petitioner was not aware of any of such notices/communications; that further, the accountant engaged by the petitioner on account of some medical emergency, has left the job abruptly, without even informing the petitioner and though the petitioner engaged another Accountant, he also failed to notice those notices/communications, since, the notices/communications were not uploaded under the usual column, viz., View Notice/Order, but under different column, "View Additional Notices/Orders"; that the petitioner came to know of the impugned order only on intimation with regard to payment of tax is made by the second respondent and immediately thereafter, the petitioner took steps to file Appeal, however, since the petitioner's Firm computer system encountered a severe crash resulting in inability to access necessary datas and extraction of some datas related to the case warranted additional time, there was a delay of 159 days in filing the Appeal; that the first respondent/Appellate Authority, without even granting an opportunity of personal hearing, passed an order of rejection of the Appeal vide order dated 18.10.2024 and hence, aggrieved against both the order of assessment dated 19.12.2023 passed by the second respondent and the order of rejection of the Appeal passed by the first respondent dated 18.10.2024, the present Writ Petition is filed.

4. The learned Additional Government Pleader (T) for the respondents submitted that as far as the order passed by the second respondent dated 19.12.2023 is concerned, the petitioner has in fact filed a reply to the show cause notice, however, thereafter, since there was no response from the petitioner, the second respondent proceeded to confirm the proposals contained in the show cause notice, therefore, plea of ignorance taken by the petitioner citing that the notice was not served in person is untenable. Likewise, since the petitioner failed to file the Appeal in time, but filed the same with a delay, which is beyond the condonable period, the first respondent has rightly refused to entertain the Appeal. However, the learned Additional Government Pleader fairly submitted that in the event this Court deems it fit and proper to condone the delay, the same may be done, however, subject to certain terms.

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 19.12.2023 is an ex parte order, as the petitioner has not been heard before passing the same, since, all the notices and other allied 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, therefore, the same were unnoticed by the petitioner. Though it is the contention of the respondents that the petitioner filed reply to the show cause notice 29.09.2023, and therefore, the petitioner cannot plead ignorance citing that the notices were not served in person, considering the fact that the petitioner's erstwhile Accountant, who used to file returns on behalf of the petitioner, has left the petitioner's Firm abruptly on medical emergency and that even the other Accountant, whom the petitioner has engaged subsequently also failed to notice the communications/notices that were being uploaded in the GST Portal, the petitioner was not aware of the impugned assessment proceedings, and it was only when the petitioner received an intimation from the second respondent as regards the tax due liability, the petitioner came to know of the impugned proceedings and though the petitioner took steps to file Appeal, unfortunately, due to some system fault, the petitioner was not in a position to file Appeal in time, but filed the same with a delay of 189 days.

6.1 Thus, in the light of the aforesaid facts and circumstances of the case, this Court is of the view that though the reason assigned by the petitioner for not responding to the notices sent by the second respondent by putting the blame on the erstwhile Accountant, which has culminated in the order of assessment dated 19.12.2023 and the reason cited for non-filing of Appeal due to system fault, appears to be unreasonable, considering the fact that both the assessment order as well as rejection order were passed without hearing the petitioner and that the petitioner has complied with the pre-condition of depositing 10% pre-deposit at the time of filing of Appeal, , in the interest of justice, in order to give one more opportunity to the petitioner to putforth their claim, is inclined to condone the delay, however, with certain conditions, as demanded by the learned Additional Government Pleader for the respondents.

6.2 Accordingly, this Court is inclined to issue/pass following orders/directions:-

i) The impugned order of rejection of the Appeal passed by the first respondent/Appellate Authority dated 18.10.2024 is set aside, however, the same is subject to the condition that the petitioner deposits 5% of the disputed tax within a period of two weeks from the date of receipt of a copy of this order.

ii) As and when, such deposit is made, the first respondent/Appellate Authority is directed to take up the Appeal on file and shall decide and dispose of the same on merits and in accordance with law within a period of 30 days thereon.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

26.03.2025

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Index : yes/no
Neutral Citation : yes/no

To

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Krishnan Ramasamy,J.,

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