IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.10766, 10816, 10831 & 10834 of 2025
& W.M.P.Nos.12110, 12111, 12186,
12188, 12204, 12205, 12206 & 12208 of 2025

Tvl.Solutions Online,
Rep by its Proprietor, J.Sathish,
No.23, Balaji Garden,
SM Palayam, GN Mills Post,
Coimbatore 641 029

... Petitioner in all petitions

Vs.

Assistant Commissioner (ST),
Velandiyapalayam Assessment Circle,
Coimbatore

... Respondent in all petitions

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the orders of the respondent pertaining to an assessment orders in Form GST ASMT 13 with Ref.No.ZD330324043735K dated 08.03.2024, ZD330124063382T dated 12.01.2024, ZD330224060508M dated 12.02.2024 &

ZD330324050661S dated 11.03.2024 respectively passed under Section 62 of the TNGST Act, 2017 and quash the same as illegal, erroneous and devoid of merits.

For Petitioner
in all petitions : Mr.Varun Pandian

For Respondent
in all petitions : Mr.C.Harsha Raj,
Special Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the assessment orders in Form GST ASMT 13 with Ref.No.ZD330324043735K dated 08.03.2024, ZD330124063382T dated 12.01.2024, ZD330224060508M dated 12.02.2024 & ZD330324050661S dated 11.03.2024.

2. Mr.C.Harsha Raj, learned Special Government Pleader, takes notice on behalf of the respondent in all petitions. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that in these cases, the impugned assessment orders, pertaining to 4 months, viz., October, 2023, November, 2023, December, 2023 and January, 2024, came to be passed by the respondent under Section 62 of the Goods and Services Tax Act, 2017 (hereinafter called as "GST Act"). As per the terms of Section 62(2) , if an Assessee filed his returns within a period of 30 days from the date on which the assessment order was served to him, the said assessment order will deemed to be withdrawn. Thereafter, due to financial crisis, the petitioner had belatedly filed their returns. However, the said returns were rejected by the respondent on the aspect of limitation. The details of these writ petitions, in nut shell, are as follows:

S. No	**W.P.No.**	**Period**	**Impugned order dated**	**Monthly returns filed on**	
				GSTR1	**GSTR 3B**
1	10766/2025	October, 2023	08.03.2024	29.07.2024	30.07.2024
2	10816/2025	November, 2023	12.01.2024	29.07.2024	30.07.2024
3	10831/2025	December, 2023	12.02.2024	29.07.2024	30.07.2024
4	10834/2025	January, 2024	11.03.2024	29.07.2024	30.07.2024

4. Further, he would submit that in terms of Section 74 of the GST Act, the respondent can make the best judgement assessment order within a period of 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In such view of the matter, since the present issue is pertaining to the Financial Year 2023-2024, the said period of 5 years to make the best judgement assessment order will start on 01.01.2024 and end on 31.12.2029. Therefore, if the best judgement assessment order is passed by the respondent on 31.12.2029, the time limit, for filing the returns, will be available to the petitioner up to 30.01.2030. Hence, he would contend that since the assessment orders were made by the respondent at the earliest point of time, the legal right of the petitioner to file the returns cannot be taken away from them.

5. That apart, he would also submit that the issue involved in the present petitions has been squarely covered by the order passed in ***W.P.No.34770 of 2023,*** whereby this Court, vide order dated

14.12.2023, had condone the delay in filing the returns. In this regard, he referred paragraph Nos.7 to 16 of the said order dated 14.12.2023, which reads as follows:

> *"7. In the present case, the returns were not filed by the petitioner for the month of December 2022, January 2023 and February 2023 within the prescribed time limit. Hence, the impugned orders dated 28.03.2023 and 10.04.2023 have been passed by the respondent under Section 62(1) of the GST Act. Thereafter, the returns were filed by the petitioner for the month of December 2022 and January 2023 on 30.04.2023 and for the month of February 2023 on 24.06.2023.*
>
> *8. At this juncture, it would be appropriate to extract Section 62 of the GST Act, which reads as follows:*
>
>> *"**62. Assessment of non-filers of returns.—***
>> *(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return*

> *for the financial year to which the tax not paid relates.*
>
> *(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub section (1) of section 50 or for payment of late fee under section 47 shall continue."*

9. A reading of the above provision would make it clear that if any registered person fails to furnish the returns under Section 39 of the Act, a proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant materials, which are available or which he has gathered and pass an assessment order within a period of 5 years from the date specified under Section 44 of the Act for furnishing of the annual return for the financial year, in which the tax was not paid.

10. In the present case, since the petitioner had not filed the returns for the months of December 2022, January 2023 and February 2023 within the prescribed time limit, the assessment order has been passed by the respondent under Section 62(1) of the GST Act on 28.03.2023 and 10.04.2023.

11. In terms of the provisions of Section 62(2) of the GST Act, if a registered person furnishes the valid returns within a period of 30 days of the service of assessment order under Sub-section (1) of Section 62 of the GST Act, the said assessment order would be deemed to have been withdrawn. However, the liability for the payment of interest of Sub-section (1) of Section 50 of the GST Act or for payment of late fee under Section 47 of the GST Act shall continue.

12. The idea of implementation of the said provision is to afford an opportunity to the registered person to furnish and file the returns within a period of 30 days from the date of service of assessment order, which was passed under Section 62(1) of the GST Act.

13. Now the issue is what will be the situation if the petitioner failed to furnish the returns within a period of 30 days as prescribed under Section 62(2) of the GST Act. Whether the petitioner will lose his opportunity to file the returns or the petitioner will still be entitled to file the returns by providing sufficient reasons for non-filing of returns, whereby enabling the respondent to condone the delay and accept the returns of the petitioner.

14. Further, the respondent can make the best judgement assessment order within a period of 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 31.03.2023, in which case, the petitioner is liable to file the annual returns on or before 31.12.2023. Therefore, the said period of 5 years to make the best judgement assessment order for the respondent will start on 01.01.2024 and ends on 31.12.2029. In such case, if the best judgement assessment order is passed by the respondent on 31.12.2029, which is permissible under Section 74 of the GST Act, the petitioner can file his returns within a period of 30 days therefrom i.e., on or before 30.01.2030. Hence, the time limit is available up to 30.01.2030 for the petitioner to file their returns. When such being the case, since the best judgement assessment order has been made by the respondent at the earliest point of time, the legal right of the petitioner to file the returns, which is available under Section 62 of the Act, cannot be taken away. If the best judgement assessment order has not been passed on the earlier date, the petitioner can file his returns even without paying any interest or penalty.

15. Further, if the registered person was not able to file the returns within a period of 30 days for the reasons, which are beyond his control, the said delay may be condoned upon providing of sufficient reasons by the said person. Since Section 62 of the GST Act permits the person to file their returns as stated above, making the assessment at the earliest point of time and fixing the time limit of 30 days period will curtail the right, which is available for the Assessee.

16. In view of the above, the limitation of 30 days period prescribed under Section 62(2) of the Act appears to be directory in nature and if the Assessee was not able to file the returns for the reasons, which are beyond his control, certainly the said delay can be condonned and thereafter, the Assessee can be permitted to file the returns after payment of interest, penalty and other charges as applicable. At any cost, the right to file the returns cannot be taken away stating that the petitioner has not filed any returns within a period of 30 days from the date of best judgement assessment order. Thus, if any application is filed before the Authority concerned with sufficient reasons for non-filing of returns within the prescribed time limit as per *section 62(2) of the Act, the same shall be considered on merits. If the Authority is satisfied with the said reasons, they can condone the delay and permit the petitioner to file the returns. However, in the present case, no such application was filed by the petitioner. Therefore, this Court is inclined to pass the following orders:*

> *(i) The petitioner is directed to file an application for condonning the delay in filing the returns within a period of 15 days from the date of receipt of copy of this order;*
>
> *(ii) Upon filing of the application for condonnation of delay, the respondent is directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 30 days from the service of best judgement assessment order and thereafter, permit the petitioner to file the revised returns;*

6. Therefore, he would submit that the above said order will hold good for the present Writ Petitions also. Hence, he prayed this Court to set aside the impugned orders and condone the delay in filing the returns.

7. In reply, the learned Special Government Pleader appearing for the respondent had confirmed the submissions made by the petitioner and requests this Court to grant liberty to the respondent to impose applicable late fee, if any, against the petitioner.

8. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent and also perused the materials available on record.

9. Considering the submissions made by the petitioner and in view of the order passed by this Court in ***W.P.No.34770 of 2023***, this Court is inclined to condone the delay in filing the returns. While condonning the delay, the liberty is granted to the respondent to impose applicable late fee for the delayed period, if any, against the petitioner. Accordingly, this Court passes the following order:

(i) The petitioner is directed to file an application before the respondent for condonning the delay in filing the returns within a period of 15 days from the date of receipt of copy of this order;

(ii) Thereafter, the respondent is directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 30 days from the service of best judgement assessment order and thereafter, permit the petitioner to file the revised returns;

(iii) Upon permitting the petitioner to file the revised returns, the respondents are directed to withdraw the assessment orders dated 08.03.2024, 12.01.2024, 12.02.2024 & 11.03.2024 and thereafter, pass fresh assessment orders based on the revised returns filed by the petitioner.

10. With the above directions, these writ petitions are disposed of. No cost. Consequently, the connected miscellaneous petitions are also closed.

27.03.2025

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

To

Assistant Commissioner (ST),
Velandiyapalayam Assessment Circle,
Coimbatore

KRISHNAN RAMASAMY.J.,

nsa

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& W.M.P.Nos.12110, 12111, 12186,
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