IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.11800 of 2025
and
W.M.P.No.13364 of 2025

Ree Engineering Company works
Represented by its Sole Proprietor
Selvaraj Ilangovan
No.-16/24, Sowripallayam,
Masakallipalayam Main Road
Coimbatore-641 028.

... Petitioner

Vs.

1. Deputy Commissioner (ST)
   GST Appeal
   Commercial Taxes Building,
   Coimbatore-641 018.

2. Commercial Tax Officer (FAC)
   Singanallur (North)
   Coimbatore-1, Coimbatore
   Tamil Nadu.

... 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 in the impugned order dated 15/11/2024 bearing reference number MP.No.2534/2024 for quashing the same and direct the 1st respondent to condone the delay in filing the Appeal thereby directing him to consider the matter afresh on merits after providing an opportunity of personal hearing.

For Petitioner : Mr.V.Veeraraghavan

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

ORDER

This writ petition has been filed challenging the impugned order dated 15.11.2024 passed by the 1st Respondent and to quash the same.

2. Mrs.K.Vasanthamala, learned Government Advocate (Taxes) takes notice on behalf of the 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 07.12.2022 to the petitioner for which the petitioner its reply on 20.12.2022. But the 2nd respondent without considering the same has passed the assessment order dated 06.04.2024, against the petitioner demanding the payment of tax along with penalty and interest for the Assessment Year 2018-2019. The petitioner being a small trader failed to notice the said order being uploaded in the "view additional notices and orders" column of the GST portal. The petitioner came to know of the same only after jurisdictional officer informed him regarding the same. Immediately, the petitioner filed an appeal with delay of 28 days. However, the same was rejected by the 1st Respondent vide order dated 15.11.2024, 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 since the assessment order was uploaded in the GST portal without serving physical copy of the same to the petitioner, the petitioner was unaware of the same. The petitioner came to know of the same belatedly. 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 assessment order was uploaded in the GST portal without serving physical copy of the same to the petitioner, the petitioner was unaware of

the same. The petitioner came to know of the assessment order belatedly. Therefore, 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 15.11.2024 and condone the delay of 28 days in filing the Appeal before the 1st Respondent. Accordingly, this Court passes the following order:-

> (i) Accordingly, the impugned order dated 15.11.2024 passed by the 1st respondent is set aside and the delay of 28 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 petition is also closed.

02.04.2025

Speaking/Non-speaking order (1/2)
Index : Yes / No
Neutral Citation : Yes / No
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To

1. Deputy Commissioner (ST)
GST Appeal
Commercial Taxes Building,
Coimbatore-641 018.

2. Commercial Tax Officer (FAC)

Singanallur (North)
Coimbatore-1, Coimbatore
Tamil Nadu.

<u>KRISHNAN RAMASAMY.J.,</u>

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