IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.13338 of 2025

Roentgen Surgicals Pvt Ltd.,
Represented by its Managing Director,
Mrs.Janani,
20/29, Ground Floor, West CIT Nagar,
1st Cross Street, Chennai 600 035. ...Petitioner

Vs.

1. Deputy State Tax Officer 1,
   Nandanam Assessment Circle,
   No.46, Pasumpon Muthuramalingam Salai,
   R.A. Puram, Chennai 28.

2. Office of the Assistant Commissioner (ST),
   Government of Tamil Nadu,
   Nandanam Assessment Circle, V,
   No.46, Greenways Road,
   Chennai 600 028.

3. The Deputy Commissioner (ST),
   GST-Appeal, Chennai-II,
   Greams Road, Chennai 600 006. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the 3rd respondent, to condone the delay in filing an appeal against the order passed by the 1st respondent, and allow the petitioner company to file an appeal within a reasonable time.

For Petitioner : Ms.S.Dackshata

For Respondent : Ms.Amrita Poonkodi Dinakaran
Government Advocate (tax)

Order

Ms.Amrita Poonkodi Dinakaran, learned Government Advocate (Tax), takes notice on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for final disposal at the stage of admission itself.

2. The present Writ Petition is filed for issuance of a Writ of Mandamus to direct the 3rd respondent, to condone the delay in filing an appeal against the order passed by the 1st respondent, and allow the petitioner company to file an appeal within a reasonable time.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the supply of surgical materials and is registered under Goods and Service Tax Act, 2017. During the relevant period 2017-2018, the petitioner had filed its return and paid appropriate taxes. While so, a show cause notice in Form DRC-01 was issued to the petitioner, on 29.09.2023, alleging that the taxpayer has availed ITC under reverse charge mechanism without actual payment of the liability arising on the supply for the tax period 2017-18. The petitioner was using a new GST portal since the old portal was still linked to the previous management of the company. The petitioner had taken over management of the Company only in the year 2018. On 29.12.2023, an order for dropping of the charges by the 2nd respondent herein at 12.00 p.m., was uploaded in the old portal. The order stated that the proceedings against the company with reference to the show cause notice is dropped and upon seeing the said proceedings, the petitioner believed that the charges were dropped. However, on the same day i.e., on 29.12.2023, around 5.00 p.m., the first respondent passed an impugned order, imposing a demand of Rs.8,26,141/-, treating it as a final order.

4. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

5. Though the present Writ Petition has been filed, seeking mandamus to direct the third respondent to condone the delay in filing an appeal against the order passed by the first respondent, the learned counsel for the petitioner in the course of arguments submitted that since the impugned order has been passed *ex parte*, the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. Considering the above submissions made by the learned counsel on either side and taking into consideration the undertaking given by the petitioner that the petitioner shall deposit 25% of the disputed tax, which was not objected to by the learned Government Advocate, this Court is inclined to set-aside the impugned order with terms, by issuing the following directions:-

i) The impugned order dated 29.12.2023 passed by the first respondent is set aside and the matter is remanded to the authority concerned for fresh consideration.

ii) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of two weeks from the date of receipt of a copy of this order.

iii) Thereafter, the petitioner is directed to file a reply along with supportive documents within a period of two weeks.

iv) Thereupon, the respondent is directed to consider the reply and shall issue a clear 14 days notice, affording an opportunity of personal hearing to the petitioner and shall decide the matter in accordance with law.

7. With the above observations & directions, this Writ Petition is disposed of. No costs.

17.04.2025

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Index : yes/no
Neutral Citation : yes/no

To
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Krishnan Ramasamy,J.,

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