IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2025

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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.26817 of 2025

Malla Gounder Thangavelu
No.311, Anna Nagar,
Magudanchavadi,
Salem, Tamil Nadu. .... Petitioner

..Vs..

1. Joint Commissioner (ST)(Intelligence)
Salem.

2. State Tax Officer
Insection-3,
Salem, (Intelligence Revision),
Commercial Taxes Building,
Pirchards Road, Hasthampatti,
Salem. .... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to condone the delay in filing the appeal pertaining to the impugned order passed by the 2nd respondent in Proceeding GSTN 33ADFPT4519H1ZI/2022/23 dated 31/08/2024 and provide an opportunity to the petitioner to present his case under the Principles of Natural Justice and decide the subject case on merits.

For Petitioner : Mr.Pichiaya

For Respondents : Ms.P.Selvi
Government Advocate (Taxes)

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ORDER

Ms.P.Selvi, learned Government Advocate (Taxes) 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. This Writ Petition has been filed seeking for a direction to the 1st respondent to condone the delay in filing the appeal pertaining to the impugned order passed by the 2nd respondent in Proceeding GSTN 33ADFPT4519H1ZI/2022/23 dated 31/08/2024 and provide an opportunity to the petitioner to present his case under the Principles of Natural Justice and decide the subject case on merits.

3. The learned counsel for the Petitioner submitted that the 2nd respondent issued show cause notice dated 27.05.2024 and the same was uploaded in the GST portal without serving physical copy of the same to the petitioner. Therefore, the petitioner was not aware of the same and hence failed to submit its reply. Since the petitioner failed to submit its reply to the show cause notice, the 2nd respondent passed the assessment order dated 31.08.2024, against the petitioner demanding the payment of tax along with penalty and interest for the Assessment Year 2022-2023 and the same was also uploaded in the GST portal without serving physical copy. Therefore, the petitioner was not aware of the assesement order. After coming to know of the assessment, the petitioner filed an appeal before the 1st respondent on 27.12.2024 and the same was rejected on 16.04.2025 for the reason that there is no reason for delay of filing the appeal. Thereafter,again the petitioner filed an appeal before the 1st respondent on 14.05.2025 with a delay of 27 days and the same was rejected by the 1st respondent on 23.05.2025 the ground of delay.

4.The learned counsel for the petitioner would submit that due to the ill health, the petitioner could not be file appeal within time. Hence, 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 2nd 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 that 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 statutory deposit at the time of filing the 1st appeal and is ready and willing to deposit additional 5% of the disputed tax before the appellate authority, in the event if the delay is condoned and the appeal is taken on record.

7. Heard both sides and also perused the materials available on record.

8. In the present case, it is stated by the petitioner that due to the ill health, the petitioner could not file appeal within the time.

9. Considering the facts and circumstances of the case, this Court is of the view that the reasons assigned by the petitioner for delay in filing the appeal appears to be genuine.

10. Though the prayer sought for by the writ petitioner is only for the mandamus to direct the 1st respondent to condone the delay in filing the appeal pertaining to the impugned order passed by the 2nd respondent dated 31/08/2024, technically, the said relief sought for is erroneous, as the petitioner ought to have questioned the petition filed for condonation of delay. In the absence of such a petition, once again directing the authority to consider the question of delay would be nothing but prolonging the litigation and with a view to render substantial justice and in the interests of either party, this Court sitting under Article 226 of Constitution of India, is inclined to invoke its extraordinary power to set aside the order passed by the 1st respondent dated 23.5.2025 by condoning the delay of 27 days in filing the Appeal. Accordingly, this Court passes the following order:-

(i) The order passed by the 1st respondent dated 23.05.2025 rejecting the petition for condonation of delay is set aside and the delay of 27 days is condoned subject to payment of additional 5% of disputed tax demand before the 1st respondent as agreed by the petitioner, excluding the statutory deposit of 10% already made.

(ii)On such payment being made, the 3rd 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.

11. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

24.07.2025

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Index : yes/no
Neutral Citation : yes/no

To

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   Salem.

2. State Tax Officer
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   Salem.

Krishnan Ramasamy,J.,

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