IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2025

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 37143 of 2025
and
W.M.P. Nos.41555 & 41559 of 2025

Tvl. B V Enterprises,
No.3, Bharathiyar Street,
Kamarajapuram, Patstabiram,
Chennai, Tamil Nadu – 600 072 ... Petitioner

Vs.

1.The Assistant Commissioner(ST)(FAC)
Avadi Assessment Circle,
Wall Tax Road, Chennai – 3.

2.The Commercial Taxes,
[GST appeals], Chennai - 6.

[R2 – Suo-motu impleaded as 2nd respondent
vide order dated 06.10.2025 in
W.P.No.37143 of 2025] ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order in Form GST DRC 07 Ref No.ZD330824242643E dated 27.08.2024, issued by the respondent and quash the same as illegal, and consequently for the tax period April 2019 to March 2020.

For Petitioner : Mr.C.Bosco
For Respondents : M/s.P.Selvi
Government Advocate

ORDER

This writ petition is taken up for final hearing and disposed of at the time of admission after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2. In this writ petition, the petitioner has challenged the impugned order dated 27.08.2024 passed by the respondent under Section 73 of the respective GST Enactments.

3. The facts on record reveal that the petitioner had earlier unsuccessfully challenged the impugned order dated 27.08.2024 by filing an application for rectification of the aforesaid order on 23.11.2024 under Section 161 of the respective GST Enactments. The said application filed under Section 161 was rejected vide order dated 27.01.2025.

4. In this background, the petitioner filed an appeal before the Appellate Authority namely the Commercial Taxes [GST appeals] on

07.03.2025, which has been rejected on 07.05.2025 on the ground that it has been filed beyond the condonable period of limitation.

5. The learned counsel for the petitioner submits that since the application for rectification was rejected only on 27.01.2025, the petitioner rightly invoked the jurisdiction of the Appellate Authority on 07.03.2025, by filing an appeal which has been rejected vide order dated 07.05.2025 by the Appellate Authority of Commercial Taxes [GST appeals].

6. It is therefore submitted that the petitioner, left with no other remedy, filed this writ petition, challenging the impugned order dated 27.08.2024, as the petitioner's grievance had not been addressed.

7. It is further submitted that although the petitioner had replied to the notice in DRC-01 dated 18.05.2024 vide reply dated 17.06.2024, the petitioner was not heard before the final order was passed and therefore, the impugned order is liable to be quashed.

8. The learned Government Advocate for the respondent, on the other hand, would submit that the petitioner's reply dated 17.06.2024 was considered by the respondent while passing the impugned order dated 27.08.2024. It is therefore submitted that the order is a well considered order and therefore does not warrant any interference under Article 226 of the Constitution of India.

9. That apart, the learned Government Advocate for the respondent would submit that the petitioner had wrongfully invoked the jurisdiction of the respondent under Section 161 of the respective GST Enactments on 23.11.2024 and therefore, the same has been rejected correctly by the respondent on 27.01.2025. It is further submitted that one of the defects that was proposed in the notice in DRC-01 dated 18.05.2024 was also dropped vide order date 27.08.2024. Therefore, on this count also, there is no scope for interference with the impugned order.

10. Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the

respondents, I am of the view that the relief sought for in this writ petition cannot be granted to the petitioner, particularly in the light of the fact that the petitioner has approached the authority not only under Section 161 of the respective GST Enactments, but also the Appellate Authority under Section 107 of the respective GST Enactments.

11. The petitioner, pursuant to the order dated 27.01.2025, passed under Section 161 of the respective GST Enactments, preferred the Appellate remedy against the impugned order dated 27.08.2024 instead of preferring an appeal against the order dated 27.01.2025. However, when the petitioner preferred an appeal against the order-in-original dated 27.08.2024, the limitation prescribed under Section 107 of the respective GST Enactments had expired. The appeal that was filed on 07.03.2025 was beyond the statutory period of limitation and therefore, the same has been rejected vide order dated 07.05.2025.

12. Since the petitioner has kept the issue alive by choosing the wrong remedy before the wrong Forum, the petitioner cannot be left

without any remedy by applying the Latin Maxim *'Ubi jus ibi remedium'*. In certain cases, where a party approaches the wrong forum, the Court has taken a view that the principle under Section 14(2) of the Limitation Act will apply. Considering the same, this writ petition is disposed of by directing the Appellate Authority to dispose of the petitioner's appeal on merits without reference to limitation.

13. Since the Appellate Authority is not a party to the proceedings, the Appellate Authority namely the Commercial Taxes (GST Appeals), Chennai - 6, is *suo motu* impleaded as the second respondent in this writ petition. Accordingly, the second respondent shall dispose of the appeal filed by the petitioner on 07.03.2025 against the impugned order dated 27.08.2024 on merits without further reference to limitation. The larger issue regarding the limitation is left open to be considered as and when an opportunity arises before this Court.

14. The writ petition stands disposed of. Since the appeal ought to have been otherwise filed within a period of three months and the delay could be condoned only for a further period of one month under Section

107 of the GST Enactments, the petitioner shall also deposit an additional 10% as required under Section 107 of the respective GST Enactments within a period of thirty (30) days from the date of the receipt of the order.

15. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.10.2025

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Index: Yes/ No
Speaking order/Non-Speaking order
Neutral Citation Case:Yes/No

To

1.The Assistant Commissioner(ST)(FAC)
Avadi Assessment Circle,
Wall Tax Road, Chennai – 3.

2.The Commercial Taxes,
[GST appeals], Chennai - 6.

C. SARAVANAN, J.

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