IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38741 of 2024
and
W.M.P.No.41947 of 2024

Mr.Palaniyand Sharavanan
Proprietor,
M/s.Saran Machine Plaza,
2nd Floor, No.8, Maple Shopping,
Hirandani Parks, Thirveni Nagar,
Padharvadi Village, Oragadam,
Kancheepuram, Chennai 603 204. ...Petitioner

Vs

1. The Deputy Commissioner (ST),
   GST-Appeal, Chennai -II,
   Main Building, 2nd Floor,
   Greams Road, Chennai 600 006.

2. The Deputy State Tax Officer-I,
   Oragadam Assessment Circle,
   No.4/109, 3rd Floor, Bangalore,
   Chennai Highway, Varadarajapuram,
   Nazarathpet, Chennai 600 123. .. 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 culminating in impugned order RC.No.3702/2024/A1 dated

21.10.2024 passed by the 1st respondent and quash the same and consequently direct the 1st respondent to take up the appeal filed by the petitioner.

For Petitioner : Mr.K.Chandrasekaran

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition is filed challenging the order of the 1st appellate authority viz., The Deputy Commissioner (ST), GST-Appeal rejecting the petitioner's appeal on the premise that it is filed beyond the period stipulated under 107(4) of the Act.

2. It is submitted by the learned counsel for the petitioner that for the assessment period 2018-19 an order came to be passed on 26.04.2024. Aggrieved by the same, the petitioner had filed an appeal on 23.08.2024 and the same was also duly acknowledged. It is also submitted by the learned counsel for the petitioner that the petitioner ought to have filed the appeal within a period of 3 months i.e. on or before 26.07.2024, but the appeal was filed on 23.08.2024. It is further submitted that the appellate authority has the discretion to condone the

delay if sufficient cause is shown in presenting the appeal within a further period of one month from the prescribed period of 3 months.

3. The learned counsel for the Respondents would submit that though the petitioner have uploaded the appeal on 23.08.2024, nevertheless the hard copy/ physical/ manual appeal was filed on 18.09.2024 and that has been taken to be the date of filing the appeal. Resultantly, the impugned order has been passed treating the appeal as having been filed after the statutory period of limitation.

4. It is submitted by the learned counsel for the petitioner that the above submission is contrary to the proviso to Rule 108(2) of the GST Rules, which provides that the date of issue of provisional acknowledgment shall be considered as the date of filing of appeal. The same is extracted hereunder:

"Rule 108. Appeal to the Appellate Authority.-

*(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.*

....

***Provided** that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of **FORM GST APL-01** and a final acknowledgment, indicating appeal number, shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:"*

(emphasis supplied)

5. From a reading of the above Rule, this Court is of the view that even if for some reason, the appeal is defective, once a provisional acknowledgment is issued then the date of filing would relate back to provisional acknowledgment i.e., 23.08.2024, in the present case which is well within the limitation under Section 107(7) of the Act, and the same is not in dispute.

6. In view thereof, the impugned order dated 21.10.2024 is set aside. The 1st Respondent is directed to number the appeal and proceed to hear the appeal and pass orders in accordance with law, after affording the petitioner a reasonable opportunity of hearing.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2025

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

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MOHAMMED SHAFFIQ, J.

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