IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 19.03.2025
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The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.39431 & 39433 of 2024
and
W.M.P.Nos.42692, 42694, 42696 & 42699 of 2024

Tvl. Western India Paint Colour Co (P) Ltd.,
rep. By its Director, S.Madhuvanth.

...Petitioner in both W.Ps.

Vs.

1. The Deputy Commissioner (CT)
   GST Appeals, Chennai -II
   Chennai – 600 006.

2. The Assistant Commissioner (CT)
   Chengalpattu Assessment Circle
   No.16A, 1st Floor, 1st Main Road,
   Anna Nagar, Chengalpattu – 603 001.

...Respondents in both W.Ps.

Prayer in W.P.No.39431 of 2024 :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records on the file of the first respondent pertaining to GSTIN : 33AAACW2631A1Z2/2017-18, in ARN # AD3305240106151 order dated 22.10.2024, in rejecting the appeal and to quash the same and consequently, to direct the first respondent to entertain the Appeal and dispose of the case on merits.

Prayer in W.P.No.39433 of 2024 :

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records on the file of the first respondent pertaining to GSTIN : 33AAACW2631A1Z2/2017-18, in ARN # AD330524010614K order dated 22.10.2024 in rejecting the appeal and to quash the same and consequently, to direct the first respondent to entertain the Appeal and dispose of the case on merits.

Appearance of the Counsels in both W.Ps.

For Petitioner	:	Mr.S.Rajesh
For Respondents	:	Mr.C.Harsha Raj Special Government Pleader (T)

COMMON ORDER

Heard Mr.S.Rajesh learned counsel appearing for the petitioner and Mr.C.Harsha Raj, learned Special Government Pleader (T) who takes notice on behalf of the respondents. With consent, the main Writ Petitions are taken up for final disposal at the stage of admission itself.

2. The challenges in both the Writ Petitions are to the orders passed by the first respondent dated 22.10.2024 in rejecting the appeals filed by the petitioner and to quash the same and consequently, to direct the first respondent to entertain the Appeals and dispose of the case on merits.

3. The learned counsel for the petitioner would submit that as against the assessment orders passed by the second respondent/Assessing Officer, the petitioner preferred Appeals before the first respondent, but the same were filed with a delay of 48 days, the first respondent/Appellate Authority rejected the Appeals, which necessitated the petitioner to approach this Court by way of present Writ Petitions challenging the orders of rejection of Appeal.

3.1 The learned counsel would further submit that the delay is due to the fact that the Accountant engaged by the petitioner was not well and though the same was explained before the first respondent/Appellate Authority along with medical certificates, the first respondent refused to entertain the Appeals on the ground of delay. Therefore, the learned counsel prays for setting aside the impugned orders and sought for a direction on the first respondent/Appellate Authority to entertain the Appeals and dispose of the same in accordance with law.

4. The learned Special Government Pleader (T) for the respondents submitted that since the Appeals were filed with a delay beyond the condonable limit, the first respondent/Appellate Authority has rightly rejected the Appeals.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. Feeling aggrieved against the assessment orders passed by the second respondent in GSTR-07 dated 22.12.2023 and 27.12.2023. the petitioner preferred Appeals before the first respondent/Appellate Authority, however, while doing so, there happened to be delay of 48 days. The reason for the delay is due to the fact that the Chartered Accountant engaged by the petitioner for filing GST returns had fallen ill at that point of time, and hence, the Appeals could not be filed in time. Though the reason for the delay was explained before the first respondent/Appellate Authority by producing medical certificate, since, the Appellate Authority has no power to entertain the Appeal, which are preferred beyond the condonable limit, the Appeals came to be rejected.

6.1 It is now doubt true that whenever the assessees are filing the Appeals with a delay beyond the condonable limit, certainly, the Appellate Authority would reject such Appeals, and the assessees, having left with no other option would approach this Court seeking to quash the same by invoking power under Article 266 of the Constitution of India. However, it is pertinent to mention here that though the Appellate Authority is not conferred with power to condone the delay which exceeds beyond the period of 30 days, the Appellate Authority has to see through it as to whether the delay in institution of such appeal proceedings is on the aspect of substantive law or procedural law. In case, where, the delay is on the aspect of substantive law, certainly, the Appellate Authority has no power to condone the delay and supposedly, the delay in institution of the appeal proceeding is on the procedural law aspect, obviously, the Appellate Authority has power to condone the delay.

6.2 In the present case, the delay in filing the Appeals is due to the fact that the Accountant engaged by the petitioner was not well. Thus, in the present case, the delay is not covered on the aspect of substantive law but on the procedural aspect. Therefore, the first respondent/Appellate Authority, has been conferred with power to entertain the Appeal beyond the condonable period of 30 days, however, he has refused to entertain the Appeals and rejecting the same on the limitation aspect.

6.3 Thus, this Court, taking into consideration of the aforesaid facts and circumstances of the case and that the reasons assigned for the delay is genuine, coupled with the further fact that pre-deposit of 10% of the disputed tax has been made by the petitioner while preferring such Appeal, in the interest of justice,is of the view that the delay is required to be condoned, in fact, justice demands so.

6.4 Accordingly, this Court is inclined to pass the following order/direction:-

i) The delay in filing the Appeals is condoned.

ii) Consequently, the impugned orders of rejection of the Appeals dated 22.10.2024 are set aside.

iii) The first respondent/Appellant is directed to take up the Appeals on file and dispose of the same on merits and in accordance with law.

7. The Writ Petitions are allowed on the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

19.03.2025

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Index : yes/no
Neutral Citation : yes/no

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Krishnan Ramasamy,J.,

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