BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

W.P.(MD)No.3202 of 2025
and
W.M.P.(MD)No.2238 of 2025

Tvl.Uthapuram Kanmoi Pasana Vivasaigal Sangam
Rep. by its Proprietor
P.Sonaimuthu ... Petitioner

-vs-

1. The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commisioner,
Thirumangalm Assessment Circle,
Commercial Tax Office, 15/19, Jawahar
Nagar, Sonaiyar Street, Thirumangalam,
Madurai District - 625 706.

2. The Assistant Commissioner (Circle),
Thirumangalam Assessment Circle,
Commercial Tax Office,
15/91, Jawahar Nagar, Sonaiyar Street,
Thirumangalam,
Madurai District - 625 706. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records pertaining to impugned order of the 2nd Respondent in ASMT - 13 in Reference No.ZB3305222417155 dated 12.05.2022 for the Tax Period February 2022 and quash the same.

For Petitioner : Mr.R.Veeramanikandan

For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

This Writ Petition has been filed seeking to quash the impugned proceedings of the second respondent in ASMT-13 in Reference No. ZB3305222417155, dated 12.05.2022, for the tax period of February 2022.

2. With the consent of both sides, this Writ Petition is disposed of, at the admission stage itself.

3. The case of the petitioner is that he failed to file the monthly returns in GSTR - 3B for the month of February 2022 within the due date. Therefore, the second respondent had issued notice dated 26.03.2022 under

Section 46 of the TNGST Act, 2017 directing the petitioner to file the returns for the month of February 2022, within a period of 15 days. Thereafter, the second respondent has passed the order on 12.05.2022, assessing the petitioner under best of judgment and demanded the tax amount of Rs.3,05,934/-. As per the amended provision of Section 62(2) of the Goods and Services Tax Act, 2017 [hereinafter referred to as "the GST Act"], the time to file the returns has been extended to 60 days and the said amendment was given effect from 01.10.2023. The petitioner was unable to file his returns even within the extended period of 60 days due to his ill-health and filed the returns along with interest and late fee on 25.11.2024. However, the second respondent is insisting the petitioner to pay the demand as per the order dated 12.05.2022. Hence, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submits that as per Section 62(2) of the GST Act, if an assessee filed his/her returns within a period of 60 days from the date on which the assessment order was served to him / her, the said assessment order passed by the Department will be deemed to be withdrawn. In the present case, there was a delay in filing the returns due to

ill-health of the petitioner. Hence, the learned counsel for the petitioner prays this Court to condone the said delay and to quash the impugned assessment orders passed by the second respondent.

5. In reply, the learned Government Advocate appearing for the respondents would submit that only if the returns were filed within a period of 60 days from the date on which the best judgement assessment orders were served, the petitioner is certainly entitled to avail the benefit, which is available under Section 62(2) of the GST Act. However, in the present case, the returns were not filed by the petitioner within the prescribed time limit. Hence, the learned Government Advocate requested this Court to pass appropriate orders.

6. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents and also perused the materials available on record.

7. In the present case, the returns were not filed by the petitioner for the months of February 2022, within the prescribed time limit. Hence, the

impugned order dated 12.05.2022 has been passed by the second respondent under Section 62(1) of the GST Act. Thereafter, the returns were filed by the petitioner for the month of February 2022 on 25.11.2024.

8. At this juncture, it would be appropriate to extract Section 62 of the GST Act, which reads as follows:-

> ***"62. Assessment of non-filers of returns.—***
>
> *(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.*
>
> *(2) Where the registered person furnishes a valid return within sixty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub section (1) of section 50 or for payment of late fee under section 47 shall continue."*

9. A reading of the above provision would make it clear that if any registered person fails to furnish the returns under Section 39 of the Act, a proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant materials, which are available or which he has gathered and pass an assessment order, within a period of 5 years from the date specified under Section 44 of the Act for furnishing of the annual return for the financial year, in which the tax was not paid.

10. In the present case, since the petitioner had not filed the returns for the month of February 2022 within the prescribed time limit, the assessment order has been passed by the second respondent under Section 62(1) of the GST Act on 12.05.2022.

11. In terms of the provisions of Section 62(2) of the GST Act, if a registered person furnishes the valid returns within a period of 60 days of the service of assessment order under sub-section (1) of Section 62 of the GST Act, the said assessment order would be deemed to have been withdrawn. However, the liability for payment of interest of sub-section (1) of Section 50 of the GST

Act or for payment of late fee under Section 47 of the GST Act shall continue.

12. The idea of implementation of the said provision is to afford an opportunity to the registered person to furnish and file the returns within a period of 60 days from the date of service of assessment order, which was passed under Section 62(1) of the GST Act.

13. Now, the issue is, what will be the situation, if the petitioner failed to furnish the returns within a period of 60 days as prescribed under Section 62(2) of the GST Act. Whether the petitioner will lose his opportunity to file the returns or the petitioner will still be entitled to file the returns by providing sufficient reasons for non-filing of returns, whereby enabling the second respondent to condone the delay and accept the returns of the petitioner.

14. Further, the second respondent can make the best judgment assessment order within a period of 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 26.03.2022, in which case, the

petitioner is liable to file the annual returns on or before 31.12.2022. Therefore, the said period of 5 years to make the best judgment assessment order for the second respondent will start on 01.01.2023 and ends on 31.12.2028. In such case, if the best judgement assessment order is passed by the second respondent on 31.12.2028, which is permissible under Section 74 of the GST Act, the petitioner can file his returns within a period of 60 days therefrom *i.e.*, on or before 28.02.2029. Hence, the time limit is available up to 28.02.2029 for the petitioner to file his returns. When such being the case, since the best judgment assessment order has been made by the second respondent at the earliest point of time, the legal right of the petitioner to file the returns, which is available under Section 62 of the Act, cannot be taken away. If the best judgment assessment order has not been passed on the earlier date, the petitioner can file her returns even without paying any interest or penalty.

15. Further, if the registered person was not able to file the returns within a period of 60 days for the reasons, which are beyond his/her control, the said delay may be condoned upon providing of sufficient reasons by the said person. Since Section 62 of the GST Act permits the person to file their returns as

stated above, making the assessment at the earliest point of time and fixing the time limit of 60 days period will curtail the right, which is available for the assessee.

16. In view of the above, the limitation of 60 days period prescribed under Section 62(2) of the Act appears to be directory in nature and if the assessee was not able to file the returns for the reasons, which are beyond his/her control, certainly the said delay can be condoned and thereafter, the assessee can be permitted to file the returns after payment of interest, penalty and other charges as applicable. At any cost, the right to file the returns cannot be taken away stating that the petitioner has not filed any returns within a period of 60 days from the date of best judgment assessment order. Thus, if any application is filed before the authority concerned with sufficient reasons for non-filing of returns within the prescribed time limit as per section 62(2) of the Act, the same shall be considered on merits. If the authority is satisfied with the said reasons, they can condone the delay and permit the petitioner to file the returns. However, in the present case, no such application was filed by the petitioner. Therefore, this Court is inclined to pass the following orders:-

(i) The petitioner is directed to file an application for condoning the delay in filing the returns within a period of 15 days from the date of receipt of copy of this order.

(ii) Upon filing of the application for condonation of delay, the second respondent is directed to consider the said application and pass orders by taking into consideration of the reasons provided by the petitioner for non-filing of returns within a period of 60 days from the service of best judgment assessment order and thereafter, permit the petitioner to file the revised returns.

17. With the above directions, this Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
PKN

14.03.2025

To:-

1. The Commissioner of Commercial Taxes,
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Ezhilagam, Chepauk,
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VIVEK KUMAR SINGH, J.

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