BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

W.A.(MD)No.1705 of 2025
and
C.M.P.(MD)No.9512 of 2025

M/s.Viha Hotels Private Limited,
Rep. by its Director,
M.Vinoth. ... Appellant

Vs.

The Assistant Commissioner of GST and Central Excise,
Tanjavur Division, Ponnagar,
Medical College Road,
Tanjavur - 613007. ... Respondent

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order passed in W.P.(MD)No.15360 of 2025 dated 09.06.2025 on the file of this Court.

For Appellant : Mr.A.K.Antony

For Respondent : Mr.R.Gowri Shankar,
Central Govt. Standing Counsel.

JUDGMENT
(By G.R.SWAMINATHAN, J.)

Heard both sides.

2.The appellant herein filed W.P.(MD)No.15360 of 2025 assailing the order dated 30.01.2025 passed by the respondent levying penalty. The learned Single Judge relegated the appellant to go before the appellate authority. It is seen that the appellant had earlier filed statutory appeal but withdrew the same before the writ petition came up for hearing. The learned Single Judge permitted the appellant to re-file the appeal. Paragraph No.9 of the order of the learned Single Judge reads as follows:-

> *"9. At this stage, the learned counsel for the petitioner also submits that the petitioner has filed a statutory appeal today, but has withdrawn the same. Since this Court is of the view that the appeal is maintainable, the petitioner is permitted to re-file the appeal within a period of 15 days from the date of receipt of a copy of this order. The petitioner shall comply with the requirements of the respective GST enactments as in force along with the application.*

Aggrieved by the same, this writ appeal has been filed.

3.The learned standing counsel for the department submitted that in view of the amendment made to Section 107 of the Central Goods and Services Tax Act, for filing an appeal, the appellant has to pay a sum equal to 10% of penalty.

4.In the case on hand, admittedly, the appellant had paid the entire tax amount and interest. The learned counsel for the appellant states that the tax was paid though after discovery by the officer but well before the last date for making payment. It is also seen that the cause of action arose before the amendment was made to Section 107 of the Central Goods and Services Tax Act.

5.Considering the special facts and circumstances obtaining in this case, we permit the appellant herein to file a fresh appeal before the appellate authority within a period of three months from the date of receipt of a copy of this judgment. Such an appeal will be entertained by the authority without reference to limitation. Since the entire tax amount and interest had already been remitted and since the cause of action arose before the amendment was made, the appeal shall be entertained without insisting that the appellant should pay a sum equal to 10% of the penalty. We make it clear that we have not gone into the merits of the matter. All the contentions and defences of the appellant are left open. If the appellant files the appeal within the time stipulated above, the same shall be disposed of on merits and in accordance with law within a period of three months thereafter. We clarify that this order shall not be treated as a precedent.

6.With the aforesaid liberty to the appellant, this writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (K.R.S. J.,)
04.07.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.
and
K.RAJASEKAR, J.

ias

W.A.(MD)No.1705 of 2025

04.07.2025