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WP.No.27770 of 2024

In the High Court of Judicature at Madras

Dated : 19.9.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.27770 of 2024 &  
WMP.Nos.30280 & 30281 of 2024

Tvl.CANPLY, rep.by its  
Proprietor Mr.Robert Jose

...Petitioner

Vs

1.The Deputy Commissioner (ST)  
(FAC), GST Appeals, Commercial  
Tax Office Buildings,  
Dr.Balasundaram Road,  
Coimbatore-18.

2.The Assistant Commissioner (ST),  
Perur Assessment Circle,  
Dr.Balasundaram Road,  
Coimbatore-18.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned appeal order bearing reference number MP.No.1395/ 2024 dated 12.7.2024 issued by the first respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam  
For Respondents : Mr.G.Nanmaran, SGP



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ORDER

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This writ petition has been filed challenging the order dated 12.7.2024 passed by the first respondent dismissing the appeal on the ground that the appeal was filed even beyond the condonable period of limitation and that there is no provision in the Tamil Nadu Goods & Service Tax Act, 2017 to condone the delay and entertain the appeal.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader accepting notice for the respondents.

3. The case of the petitioner is that the assessment order dated 22.12.2023 was issued by the second respondent alleging a mismatch between GSTR - 3B and ITC auto populated in GSTR - 2A to the tune of Rs.54,03,412/- towards tax and penalty. Aggrieved by the said order of assessment, the petitioner filed an appeal before the first respondent on 02.5.2024 along with a petition to condone the delay in filing the appeal. However, the appeal itself came to be dismissed by the first respondent by the impugned order. Challenging the same, the petitioner is before this Court.

4. It is not in dispute that at the time of filing the appeal, the



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petitioner made 10% payment towards the condition of pre-deposit before the first respondent.

5. The learned Special Government Pleader appearing for the respondents submits that the assessment order was passed on 22.12.2023, that the limitation period prescribed under the Statute to file an appeal expired by 22.3.2024, that the further one month time given under the Statute for showing sufficient cause for non presenting the appeal also expired by 22.4.2024, that however, the petitioner filed the appeal before the first respondent only on 02.5.2024 along with the petition to condone the delay and that therefore, the first respondent dismissed the appeal itself. Hence, he has sought for dismissal of the writ petition.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned order passed by the first respondent.

7. While dismissing the appeal, the first respondent observed that there is no provision under the said Act to condone the delay and entertain the appeal. The first respondent is well justified in



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dismissing the appeal itself on the ground that it had been presented beyond the condonable period of limitation stipulated under the said Act.

8. In the instant case, on going through the assessment order, it is seen that a total tax liability of Rs.49 lakhs together with 10% penalty has been imposed against the petitioner on the ground that there was a mismatch of the input tax claim between GSTR - 3B and the ITC auto populated in GSTR - 2A. The petitioner has come up with a clear case that no opportunity was given before passing the assessment order. Hence, they filed an appeal before the first respondent. However, the appeal itself was dismissed by the impugned order as it was filed beyond the condonable period. However, this Court is inclined to afford an opportunity to the petitioner by putting the petitioner on terms.

9. In the light of the above discussions, the impugned order passed by the first respondent in M.P.No.1395/2024 dated 12.7.2024 is hereby set aside. The delay in filing the appeal before the first respondent is condoned. The appeal filed by the petitioner shall be taken on file by the first respondent. The first respondent shall thereafter issue notice to the petitioner, afford an opportunity of



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personal hearing and thereafter pass final orders in the appeal itself within a period of three months from the date of receipt of a copy of this order.

10. In the result, this writ petition is allowed with the above directions. No costs. Consequently, the connected WMPs are closed.

SAG | blog

19.9.2024

To

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(FAC), GST Appeals, Commercial  
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RS



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RS

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