IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.19846 of 2023
and
W.M.P.No.19190 of 2022

Medpro Healthcare Services Private Limited,
Represented by its Director,
Narayanan Sukumaran Rageev Kumar,
20, Shanthipuram First Street,
Thirumullaivoil, Chennai – 600 062. ... Petitioner

Vs.

The Commissioner of GST and Central Excise (Appeals-I),
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned Order-in-appeal No.157/2023(CTA-1) dated 24.05.2023 having DIN:20230559KT0000999FE1 passed by the respondent, quash the same and direct the respondent to give an opportunity to the petitioner to explain the delay and thereafter dispose the appeal in accordance with law.

For Petitioner : Mr.S.Anandh

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

Mrs.R.Hemalatha, learned Senior Standing Counsel takes notice on behalf of the respondent.

2. The petitioner is aggrieved by the impugned Order-in-Appeal No.157/2023(CTA-1) dated 24.05.2023. By the impugned order, the respondent herein has dismissed Appeal No.143/2022(CTA-1)(CN) dated 02.08.2022 filed against the Order-in-Original No.81/2022-CHN (ADC) dated 06.05.2022. The petitioner had received the aforesaid Order-in-Original No. 81/2022-CHN (ADC) dated 06.05.2022 on 10.05.2022. However, the petitioner did not file the appeal under Section 85 of the Finance Act, 1994 within the normal period of limitation of 60 days from the date of receipt of the copy of Order-in-Original No. 81/2022-CHN (ADC) dated 06.05.2022. Instead of, the petitioner filed the appeal on 02.08.2022. The appeal was filed beyond the normal period of limitation, but within the period within which the delay can be condoned by the Appellate Commissioner under Section 85(3A) of the Finance Act, 1994.

3.After numbering the appeal, the petitioner also appears to have appeared before the Appellate Commissioner. However, Appellate Commissioner had dismissed the appeal with the following observations:

> *"2.2.Aggrieved by the impugned order,the appellant .... In the instant case, as per the postal envelope submitted by the Appellant on 10.05.2022. Therefore, last date to file any appeal was 09.07.2022, therefore, the Appeal was filed beyond the statutory time limit of two months. It is pertinent to mention here that proviso to Section 85(3A) allows the Commissioner of Central Excise (Appeals) to condone a delay upto one month beyond the prescribed two months, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months. However, in the instant case, the Appellant did not submit any reasons for delay in filing the Appeal and have not requested to condone delay in filing. In absence of the same, the delay cannot be condoned as a matter of routine. As a corollary, the instant Appeal is liable to be rejected."*

4.It is evident that the petitioner cannot be denied the opportunity of the delay being condoned. The Office of the Commissioner of GST and Central Excise (Appeal) has numbered the appeal without issuing defect Memo to the petitioner stating that the appeal was beyond the statutory time limit of two months from the date of receipt of Order-in-Original No. 81/2022-CHN (ADC) dated 06.05.2022. The petitioner should have been called upon to explain how the appeal was maintainable without an application for condoning the delay. If such an opportunity was given, perhaps, the petitioner could have filed appropriate application to condone the delay. Instead of, the Appellate Commissioner has straight away proceeded to pass the impugned order.

5.Considering the above, the impugned order is liable to be set aside and the case is liable remitted back to the respondent. The petitioner shall therefore file an application for condoning the delay explaining the reasons for delay in filing the appeal on 02.08.2022 within a period of 15 days from the date of receipt of a copy of this order. If the delay is properly explained and delay is codoned by the Appellate Commissioner, the appeal shall be heard on merits and disposed in accordance with law by the Appellate Commissioner within a period of 75 days from the date of receipt of a copy of this order.

6.This writ petition stands disposed of at the time of admission. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2023

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation:Yes/No

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To

The Commissioner of GST and Central Excise (Appeals-I),
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

C.SARAVANAN, J.

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