IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2023

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THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.35694 of 2023
and
W.M.P.No.35670 of 2023

Lansun Logistics,
Represented by its Partner,
Mr.K.Elangovan,
No.1080, A/7, Rohini Flats, MunusamySalai,
K.K.Nagar, Chennai – 600 078. ... Petitioner

Vs.

1.Commissioner (Appeals-II),
Office of the Commissioner of GST &
Central Excise (Appeals-II),
Newry Towers, Second Floor, No.2054/1,
II Avenue, 12th Main Road,
Anna Nagar, Chennai – 600 040.

2.Additional Commissioner,
Office of the Commissioner
of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692, 5th Floor,
Anna Salai, Nandanam,
Chennai – 600 035. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified Mandamus, to call for the impugned proceedings of the first respondent passed in Order-In-Appeal No.278/2023 dated 27.09.2023 and quash the same and further direct the first respondent to admit and re-hear the appeal after granting opportunity of personal hearing.

For Petitioner : Mr.N.Murali
For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

This Writ Petition has been filed challenging the Order-In-Appeal passed by the first respondent dated 27.09.2023.

2. With the consent of both the parties, this matter is taken up for final disposal at the admission stage itself.

3 The case of the petitioner is that there was a delay of 21 days in filing the appeal before the first respondent/Appellate Authority. Though the petitioner has filed an application dated 26.07.2023 before the first respondent to condone the delay of 21 days, the first respondent *vide* the impugned order dated 27.09.2023, refused to entertain the Appeal, since the same has not been filed within the limitation provided under Section 85 of the

Finance Act, 1994 (hereinafter referred to as 'the Act'). Aggrieved by the same, the present Writ Petition is filed.

4. Mr.N.Murali, learned counsel for the petitioner would submit that by virtue of the Order-in-Original passed by the second respondent,dated 30.03.2023, the petitioner was provided only three months' time for filing the Appeal and the preamble portion of the said order is extracted below:

> "The appeal shall be filed in the prescribed form, in quadruplicate within three months from the date of its communication to the person whom it is addressed. The appeal should bear a Court Fee Stamp of Rs.4/-."

5. Therefore, the learned counsel submitted that the petitioner was under the impression that the time limit available for filing an appeal was 3 months and if there is any delay, the same can be filed within another period of 30 days. However, in terms of the provisions of the Act, the said three months' time is inclusive of one month delay period. The petitioner has also furnished the details with regard to delay in filing the appeal in an tabular column, which is reproduced hereinbelow:-

Date of Adjudication order	30.03.2023
Date of receipt of Adjudication order	05.04.2023
Last date for filing appeal without delay (60 days)	05.06.2023
With delay period of 30 days	05.07.2023
Appeal filed before the first respondent on	26.07.2023
No.of days delay in filing the appeal beyond the prescribed period	21 days

6. Per contra, Mr.A.P.Srinivas, learned Senior Standing Counsel who takes notice for the respondents would submit that beyond the period of 2 months plus 30 days, the Appellate Authority will have no authority to condone the delay in filing the appeal.

7. Heard both sides and also perused the materials available on record.

8. In view of the above submissions, this Court finds that since the order dated 30.03.2023 passed by the second respondent has provides 3 months time for preferring appeal, the petitioner was under the wrong impression that they can file the appeal within 3 months plus 30 days in addition, (in the event of any delay) from the date of receipt of the order 30.03.2023. But, however, the Act only provides for 2 months, which is exclusive of one month grace time for the delay, if any. Therefore, reasons assigned by the petitioner for preferring the Appeal with delay is appears to be genuine and reasonable, inasmuch as, the petitioner got confused over the time limit prescribed under the Statute, (which is only two months) and the time limit prescribed by the second respondent/Authority (which is three month's, inclusive of one month delay period. Therefore, this Court is inclined to set aside the impugned order dated 27.09.2023.

9. Accordingly, the Writ Petition stands allowed, the impugned order is set aside and the first respondent is directed to take the Appeal on record and dispose of the Appeal on merits and in accordance with law, after providing opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

22.12.2023

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Internet:Yes
Index : Yes / No
Speaking order/Non-Speaking order
Neutral Citation : Yes / No

To

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Central Excise (Appeals-II),
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MHU Complex, No.692, 5th Floor,
Anna Salai, Nandanam,
Chennai – 600 035.

KRISHNAN RAMASAMY, J.

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