IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.3778 of 2024

Annai Food Products Pvt. Limited,
Represented by its Managing Director,
T.Murugesan, Son of Thangaraj,
Having Office at: No.18,
Thiru-Vi-Ka street,
Sozhambedu Road,
Thirumullaivoyal, Chennai-600 062. ... Petitioner

-vs-

The Additional Commissioner (Appeals II),
Newry Towers, No.2054, I Block,
II Avenue, 12th Main Road,
Anna Nagar, Chennai-600 040. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondent to grant exemption to the petitioner from paying 10% of the amount demanded as pre-deposit while filing the appeal against the Order-in-Original

No.13/2023-GST(AC) on the file of the Assistant Commissioner dated 14.09.2023 and to entertain the appeal filed by the petitioner.

For Petitioner : Mr.R.Parthiban

For Respondent : Mr.S.Gurumoorthy,
Senior Standing Counsel

ORDER

The petitioner seeks a mandamus to grant exemption from payment of pre-deposit as a condition for entertaining the appeal against the order-in-original dated 14.09.2023.

2. The petitioner asserts that it sold dry dates without adding GST thereto in the *bona fide* belief that dry dates are not liable to GST until Notification No.1/2017-Central Tax (Rate) dated 28.06.2017 was issued. Pursuant to a show cause notice issued on 25.01.2023, it is stated that the order-in-original dated 14.09.2023 came to be issued. The petitioner intends to file a statutory appeal against the said order, but seeks exemption from the 10% pre-deposit.

3. Learned counsel for the petitioner submits that the petitioner would not be in a position to make the pre-deposit since it exceeds the petitioner's margin. Therefore, he submits that this is an appropriate case for this Court to exercise extraordinary jurisdiction and grant exemption from such pre-deposit.

4. Mr.S.Gurumoorthy, learned senior standing counsel, accepts notice on behalf of the respondent.

5. The Central Goods and Services Tax Act 2017 enables a party to file an appeal subject to conditions specified in Section 107 thereof. The right to appeal flows from the statute and can only be exercised subject to conditions specified therein. In these circumstances, a mandamus cannot be issued to direct the respondent to deviate from statutory prescription.

6. The order sought to be appealed against was issued on 14.09.2023. The period of limitation is 90 days and the appellate authority is empowered to condone a delay up to 30 days for sufficient cause. Consequently, the

appellate authority would have been in a position to condone delay if the appeal had been filed up to mid January 2024. Since the period of further delay is less than one month and the petitioner had invoked the jurisdiction of this Court, it is just and appropriate to direct the appellate authority to receive and dispose of the appeal on merits.

7. For reasons set out above, W.P.No.3778 of 2024 is disposed of by permitting the petitioner to file a statutory appeal. If such appeal is presented within a maximum period of ten days from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of such appeal on merits without going into the question of limitation, subject to the petitioner satisfying pre-deposit requirements in such regard. There will be no order as to costs.

20.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No
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SENTHILKUMAR RAMAMOORTHY,J.

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To

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