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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.07.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.17602 of 2024
and W.M.P.No.19388 of 2024

M/s.Procclaim,
Represented by its Partner, C.J.Jayakumar
Flat No.4C, Ceebros Apartments,
Door No.52/17, Raman Street,
T.Nagar, Chennai 600 017. ... Petitioner

-vs-

The Commissioner of GST & Central Excise
(Appeals-II), Chennai Newry Towers,
2nd Floor, No.2054/I, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order in appeal No.273/2023 dated

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25.09.2023 having DIN 20230959KU000000DA2F 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 : Mr.K.Mohanamurali, Sr. SC

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ORDER

An appellate order dated 25.09.2023 is challenged in this writ petition. Show cause notice dated 07.11.2019 was issued to the petitioner calling upon the petitioner to show cause as to why service tax of Rs.72,55,238/- should not be demanded from the petitioner. The petitioner replied to such show cause notice on 19.02.2021. An order in original dated 31.03.2021 was issued in such circumstances after taking into consideration the petitioner's reply pursuant to a personal hearing. Such order in original was served on the petitioner

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through the daughter of Mr.C.J.A.Jayakumar, Partner on 16.07.2021. The matter was carried in appeal on 24.03.2023. Such appeal was rejected by order dated 25.09.2023, which is impugned herein.

2. Learned counsel for the petitioner submits that the petitioner was unaware of the order in original until February 2023 when the petitioner requested for information relating to the service of the order in original. Shortly thereafter, he points out that the appeal was lodged before the first appellate authority. By submitting that the total liability is in the region of Rs.72,00,000/-, learned counsel seeks another opportunity.

3. Mr.K.Mohanamurali, learned senior standing counsel, accepts notice for the respondent. He points out that the petitioner not only approached the appellate authority belatedly, but also approached this Court more than nine months after the appellate order was issued.

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4. On perusal of the order in original, it is clear that the petitioner's reply to the show cause notice was taken into consideration. It is also evident that the petitioner participated in a personal hearing. The acknowledgment by the daughter of Mr.C.J.A.Jayakumar, Partner of the petitioner firm, is also on record. In such acknowledgment, it is recorded that she is the daughter of Mr.C.J.A.Jayakumar and that the communication is being received for M/s.Procclaim.

5. The Finance Act, 1994 provides for a limitation period of two months and enables condonation for a further period of thirty days. In this case, the appeal was lodged in late March 2023. Therefore, the appellate authority cannot be faulted for rejecting the appeal by the order impugned herein. The petitioner approached this Court about nine months after such appellate order. In the facts and circumstances outlined above, I am not inclined to exercise

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discretionary jurisdiction in favour of the petitioner.

6. For reasons aforesaid, W.P.No.17602 of 2024 is dismissed without any order as to costs. Consequently, W.M.P.No.19388 of 2024 is closed.

23.07.2024

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Commissioner of GST & Central Excise
(Appeals-II), Chennai Newry Towers,
2nd Floor, No.2054/I, II Avenue,
12th Main Road, Anna Nagar,
Chennai – 600 040.

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