IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.18110 of 2024 &
W.M.P.No.19899 of 2024

M/s.Proodle Hospitality Services Pvt. Ltd.,
Represented by its Director Srinath Raghavan,
Plot No.1, First Cross Street, First Main Road,
Kalaimagal Nagar, Ekkatuthangal,
Chennai - 600 032. ... Petitioner

Vs.

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

2.The Additional Commissioner of GST & Central Excise,
Chennai South Commissionerate,
692, MHU Complex, Nandanam,
Chennai - 600 035. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned Order-in-Appeal No.279/2023, dated 27.09.2023 passed by the first respondent and quash the said order thereby direct the first respondent to restore the appeal filed by the petitioner and to pass a reasoned order on merits after following the principles of natural justice.

For Petitioner : Mr.J.Shankarraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The petitioner has filed the present writ petition to quash Order-in-Appeal No. 279 of 2023, dated 27.09.2023, passed by the first respondent, and to seek a direction to restore the appeal filed by the petitioner.

2. The learned counsel for the petitioner submits that a show cause notice dated 05.07.2022 was issued to the petitioner, proposing a demand for GST to disallow alleged ineligible input tax credits, demand interest, and impose penalties. Although the petitioner submitted a reply on 02.08.2022, it was not considered, and the second respondent passed an Order-in-Original on 14.11.2022, confirming the demand and imposed penalties. The learned counsel further submits that the petitioner was unable to file the APLO1 form on the GST portal because the petitioner was pursuing with the second respondent for the uploading of the order on the Common GST portal, as well as dealing with issues related to part payment of the pre-deposit. Despite the petitioner's efforts to resolve the issue by approaching the Authority concerned, the problem remained unresolved, leading to a delay of 78 days in filing the appeal. He would further submit that the petitioner had already

deposited 10% of the tax while filing the appeal before the Appellate Authority. However, the appeal was dismissed by the Appellate Authority on the sole ground that there is no provision under the Act to condone the delay. Hence, the learned counsel sought for appropriate orders in this writ petition.

3. On the above submissions, this Court has heard the learned Government Advocate (Taxes) appearing for the respondent.

4. It is to be noted that the appeal filed by the petitioner against the impugned order was dismissed on 27.09.2023 solely on the ground that there is no provision under the Act to consider the delay petition. According to the petitioner, the delay was due to the inability to file the APLO1 form on the GST portal, which is the portal used for filing appeals and was pursing with the second respondent for the uploading of the order on the Common GST portal, as well as dealing with issues related to part payment of the pre-deposit. The reason provided for non filing of the appeal within the prescribed time, in the considered opinion of this Court, appears to be genuine.

5. Considering the facts and circumstances of the case, and having regard to the submissions made by the learned counsel on both sides, this Court, in the interest of justice, is inclined to condone the delay in filing the appeal. Consequently, the Commissioner of GST and Central Excise (Appeals-II) / Appellate Authority is directed to take up the appeal without raising any issue related to limitation and to dispose of it on merits and in accordance with the law, after affording the petitioner a reasonable opportunity to be heard.

6. The writ petition is disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

28.08.2024

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

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To

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