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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.20932 of 2024 &
W.M.P.Nos.22871 & 22872 of 2024

Eskay Cartons Private Limited
Represented by its Managing Director
Ganesan A.
No.33, 4th Cross Street,
RK Nagar, Chennai - 600 028. ... Petitioner

Vs.

Assistant Commissioner of GST and C Ex
Mylapore Division
7th Floor, Annex Building,
No.26/1, M.G. Road,
Chennai - 600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in Order in Original No.45/2023 (GST) dated 17.11.2023 and DRC-07 dated 27.12.2023 issued and quash the same.

For Petitioner : Mr.N.Murali

For Respondent : Mr.Sai Srujan Tayi
Senior Panel Counsel

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O R D E R

This Writ Petition has been filed by the petitioner to quash the impugned order dated 17.11.2023 and the consequential order dated 27.12.2023 passed by the respondent.

2. Mr.Sai Srujan Tayi, learned Senior Panel Counsel takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that the show cause notice was issued, reply filed and personal hearing was granted and the petitioner also participated and thereafter, the impugned order came to be passed by the respondent. As against the impugned order, the petitioner filed rectification application and the same was dismissed. Since the petitioner was waiting for orders in the rectification application, time for filing an appeal expired. Therefore, the petitioner is not in a position to file the appeal and hence, he approached this Court by challenging the present Writ Petition.

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5. On the other hand, the learned Senior Panel Counsel would submit that this Court may pass appropriate orders by directing the petitioner to file an appeal before the appellate authority.

6. I have considered the rival submissions made by the learned counsel on either side.

7. It is not the case of the petitioner that the show cause notice was issued, but no reply was filed and no personal hearing was provided to them. In the present case, show cause notice was issued, reply filed and personal hearing was also given. The only thing is that the impugned order was challenged because the time of filing the appeal was expired. The reason that the petitioner was waiting for the orders in the rectification application and therefore, the petitioner did not file an appeal in time.

8. The only remedy available to the petitioner is that they have to file an appeal before the appellate authority and not by way of Writ Petition. The reason assigned by the petitioner that he was waiting for orders in the rectification application and hence, he is not able to file appeal in time before the appellate authority. Therefore, the delay on the aspect of filing appeal has been condoned and the petitioner is granted liberty to file appeal before

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the appellate authority within a period of 30 days from the date of receipt of a copy of this order. In such a case, the appellate authority is directed to take the appeal subject to the payment of the statutory deposit without insisting on the aspect of limitation.

9. Accordingly, the Writ Petition is disposed of. There is no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

09.08.2024

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

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To

The Assistant Commissioner of GST and C Ex
Mylapore Division
7th Floor, Annex Building,
No.26/1, M.G. Road,
Chennai - 600 034.

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KRISHNAN RAMASAMY.J.,
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