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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 16261/2024

M/S DELCOM TELESYSTEMS PRIVATE LIMITED

.....Petitioner

Through: Ms. Monika Agarwal and Mr. Ajit Kumar Jha, Advs.

versus

APPELLATE AUTHORITY / THE COMMISSIONER OF CENTRAL TAX APPEALS, DELHI AND ANR.

.....Respondents

Through: Ms. Mehak Nakra, ASC (Civil) (GNCTD) with Ms. Gunjan Suyal and Mr. Aditya Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **25.11.2024**

CM APPL. 68473/2024 (Ex.)

Allowed subject to all just exceptions.

The application is disposed of.

W.P.(C) 16261/2024

1. This writ petition is thoroughly misconceived. We take note of the reliefs which are claimed in the writ petition which and read thus:

> "a) To issue a writ of certiorari or mandamus directing Respondent No. 2 to refund the additional payments made during the tax payments for the Financial Year 2017-18, following the instructions of the appropriate officer at that time, in light of the substantial payments made and the failure to acknowledge these payments in the Demand Order dated April 9, 2021.
> b) to consider that the failure of the demand order to acknowledge the Petitioner's substantial payments, including the comprehensive response submitted on December 18, 2020, which included

detailed documentation of overpayments, highlights a critical oversight in the assessment process, thus warranting a thorough review of the order to rectify the inaccuracies and ensure compliance with legal standards.

c) to consider a writ of certiorari or any appropriate writ, direction, or order to ensure that the refund is processed promptly, reflecting the excess payment made in alignment with legal and procedural norms, emphasizing that the delay in processing the refund places an undue financial strain on the Petitioner and contravenes principles of fairness and statutory compliance.

d)to direct the Respondent No. 1 to condone the delay of 996 days in filing the appeal against the aforementioned Demand Order issued by Respondent No. 2 under Section 73(9) of the CGST Act, 2017, due to genuine and unavoidable circumstances, including significant communication issues arising from the COVID-19 pandemic, which resulted in the Petitioner being unaware of the order, thereby allowing the Petitioner an opportunity to present the appeal on its substantive merits.

e) to issue directions to the Respondent No. 2 for a thorough reassessment of the Demand Order, recognizing the inaccuracies and omissions that have compromised the fairness of the assessment process, including the failure to consider previous submissions and verified payments made in good faith during the assessment proceedings before the Ld. Respondent No. 2.

f) to recognize that the delay of 996 days in filing the appeal resulted from unforeseen communication problems, particularly the lack of email notifications regarding the Demand Order passed under Section 73(9) of the CGST Act, 2017 dated 09.04.2021, leading to the Petitioner's unawareness of the order.

g) To acknowledge the extraordinary impact of the COVID-19 pandemic on filing procedures, which disrupted normal communication and procedural adherence, thereby contributing to the delay in filing.

h) to pass such other order(s) as this Hon'ble Court may deem fit and proper on the facts of the instant case, in order to grant necessary relief in the matter."

2. We find ourselves unable to countenance the prayer for refund bearing in mind the undisputed position that an appeal is stated to be pending before the competent appellate authority in respect of the principal order passed in the course of assessment. The petitioner would thus have to pursue the remedy of seeking condonation of delay in that appeal and await a final order being rendered thereon. The

issue of refund would have to necessarily abide by the order that may ultimately come to be passed on that appeal.

3. In view of the aforesaid, we find no justification to entertain the writ petition which shall stand dismissed.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

NOVEMBER 25, 2024

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