

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on 04.12.2023

Pronounced on 12.12.2023

WP(C) No.421/2021

**1. Commissioner State Taxes,
Jammu & Kashmir Government,
Excise and Taxation Complex,
Rail Head, Jammu.**

**2. Deputy Commissioner
Sales Tax (Appeals),
(Appellant Authority)
Excise and Taxation Complex,
Rail Head, Jammu.**

**3. Assessing Authority,
Commercial Taxes Circle "L",
Excise & Taxation Complex, Jammu**

.....Petitioners

Through: Mr. D.C. Raina, Advocate General, with
Mr. K.D.S. Kotwal, Dy.A.G.

versus

**1. M/s. 92.7 FM
C/o Adlab Films Pvt. Ltd.
Near Petrol Pump, Narwal, Jammu.**

.....Respondent(s)

**2. J&K Sales Tax (Appellate) Tribunal,
Excise & Taxation Complex,
Rail Head, Jammu,**

Through its Ld. Judicial Member

.....Proforma Respondent

Through: Mr. Sachin Sharma, Advocate.

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

JUDGMENT

Tashi Rabstan - J

1. This petition is directed against the order dated 22.12.2020 passed by the Chairman, Jammu & Kashmir Sales Tax (Appellate) Tribunal, Jammu, whereby the petition for condonation of delay came to be dismissed being not maintainable. Consequently, the petition urging question of law for reference also came to be dismissed.

2. The facts-in-brief are that respondent-92.7 FM is engaged in the business of airing/broadcasting commercial advertisements, which, according to petitioners herein, is an activity exigible to tax at the rate of 8.4% under the provisions of J&K General Sales Tax Act, 1962. Accordingly, notices were issued by the department to respondent-92.7 FM for the accounting years 2007-08 and 2008-09 in the light of notification issued under SRO 117/2007 dated 30.03.2007. The department invoked the provisions of sub-section 3 of Section 7 of the J&K General Sales Tax Act, 1962 by issuing statutory notices in Form-14 requiring the respondent-92.7 FM to furnish returns pertaining to the transactions for the aforesaid two accounting years within the time frame as stipulated in the said notices. Respondent-92.7 FM instead of filing the returns, filed a written reply seeking dropping of the proceedings on the grounds that services provided by M/s. 92.7 FM do not come within the definition of “Goods” as 92.7 FM is engaged in airing and broadcasting of advertisements through radio but not rendering services of the advertisers.

3. The contention of respondent, however, was not accepted by the Assessing Authority observing that under the provisions of J&K GST Act, 1962 and the notification under SRO 117 of 2007 radio broadcasting is also

advertiser and advertiser means a person who provides services to client. Thus, such services are deemed to be sale under Section 2 of the GST Act, 1962 and are liable to be taxed. Accordingly tax @ 8.4% amounting to Rs.17,72,476.86 for the year 2007-08 and Rs.24,87,675.28 for the year 2008-09 was found to be payable by the respondent along with interest under Section 8(8) of J&K GST Act, 1962 amounting to Rs.8,86,238.42 for the year 2007-08 and Rs.3,85,589.65 for the year 2008-09 and penalty of Rs.8,86,238/- for the year 2007-08 and Rs.3,85,589.65 for the year 2008-09 for non-filing of returns was ordered to be imposed upon the respondent-92.7 FM.

4. Against the said order the respondent-92.7 FM filed two appeals before the appellate authority, i.e., Deputy Commissioner, Sales Tax Appeals, Jammu, but the same came to be dismissed vide order dated 11.03.2011. The respondent-92.7 FM thereafter challenged the order passed by the appellate authority before the J&K Sales Tax (Appellate) Tribunal, Jammu by filing two appeals in terms of Section 11-A of the J&K GST Act, 1962, and the same came to be accepted vide order dated 22.02.2012.

5. Against the order of learned Tribunal, the petitioners herein filed OWP No.1414/2012 before the High Court. The High Court vide order dated 21.10.2019 decided the said petition with the directions that in case the petitioners herein files application before the learned Tribunal seeking reference of question(s) of law arising out of the order passed by the Tribunal within a period of three weeks from the passing of order, the period spent by the petitioners before the High court in the proceedings in OWP No.1414/2012 shall be excluded while calculating the period of limitation for the same.

6. Accordingly, the petitioners herein filed the petition before the learned Jammu & Kashmir Sales Tax (Appellate) Tribunal, Jammu on 14.11.2019 under Section 12-D of the J&K General Sales Tax Act, 1962. However, the learned Tribunal vide detailed order dated 22.12.2020 dismissed the petition for condonation of delay being not maintainable. Consequently, the petition urging questions of law for reference also came to be dismissed. Hence, the present petition.

7. Since the learned Tribunal has dismissed the petition of petitioners mainly on the ground of delay, therefore, we deem it proper to first deal with the said issue.

8. It was argued on behalf of the petitioners-department that the learned Tribunal has completely ignored the provisions of Section 12-B of the J&K GST Act, 1962 which provide that the provisions of Sections 5 & 12 of the Limitation Act, Samvat 1995 shall apply to the appeals, revisions, filed under this Act before Appellate, Reviewing Authorities or the Tribunals. Since the provisions of Section 12-B of the Act were not considered by the learned Tribunal while passing the judgment impugned, the same renders unsustainable in the eyes of law and deserves to be set aside. It was further argued that the delay was sufficiently explained by the petitioners in the application filed before the learned Tribunal seeking to condone the delay in filing the petition for reference of questions of law.

9. On the other hand learned counsel appearing on behalf of respondent-92.7 FM argued that admittedly the learned Tribunal has the power to condone the delay but not beyond 90 days (including the extended period of 30 days) in the absence of applicability of Section 5 of the Limitation Act. Since the

petition seeking reference of questions of law filed by the petitioners-department before the learned Tribunal was barred by limitation, the learned Tribunal has rightly dismissed the application for condonation of delay.

10. Heard learned counsel appearing for both the parties at length, considered their rival contentions and also perused the file in detail.

11. Section 12(D) of the J&K GST Act provides that within sixty days from the date of communication of the order of the Tribunal, passed in appeal, the person aggrieved or the Commissioner Sales Tax may file an application and require the Tribunal to refer to the High Court any question of law arising out of such appellate order. Proviso (1) of Section 12(D) provides that if the dealer or the Commissioner was prevented by sufficient cause from presenting the application within a period of 60 days, the Tribunal may allow the said application for reference to be filed within a further period not exceeding 30 days. Therefore, a conjoint reading of Section 12(D) along with first proviso shows that the maximum time within which reference could be filed by the dealer or the Commissioner should not exceed 90 days (including the grace period of 30 days) from the date of communication of appellate order.

12. Admittedly, the order passed by the appellate authority is 22.02.2022 and indisputably the same was communicated to the Commissioner on 29.02.2022 as per the own admission of petitioners in the writ petition. Therefore, 29.02.2022 is the date which is to be taken for consideration for the purposes of calculation of period of limitation for filing reference. The Commissioner, therefore, was required to file reference within 60 days, i.e., on or before 29.04.2022 or before 29.05.2022 (including the extended/grace period of 30 days subject to sufficient cause). However, no such reference was

filed within 90 days; as such it has become barred by Section 12(d) of the J&K GST Act. Thus, the order passed by the appellate authority has attained finality because in view of the provisions of Section 12(d) of the J&K GST Act, which is a special Act, has excluded the applicability of Section 5 of the Limitation Act. As per Section 12(b) of GST Act, 1962, the provisions of Section 5 and 12 of the Limitation Act shall apply to appeals, revisions, filed under this Act before the Appellate, Reviewing Authorities or the Tribunals, whereas Section 12(b) does not reveal with regard to filing of reference. As such, the judgments cited by the learned counsel for petitioners do not apply to the case in hand.

13. Therefore, in view of above discussion, we are not inclined to take a view other than the one taken by the learned Tribunal. Accordingly, the present petition is dismissed along with connected CM, if any.

Jammu
12.12.2023
(Anil Sanhotra)

(Rajesh Sekhri)
Judge

(Tashi Rabstan)
Judge

Whether the order is reportable ?
Whether the order is speaking ?

Yes/No
Yes/No