

Court No. - 9

Case :- WRIT TAX No. - 1192 of 2023

Petitioner :- M/S Modern Steel

Respondent :- Additional Commissioner And Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri R.S.Pandey, learned Standing Counsel for the State.
2. This writ petition has been filed assailing the notice dated 17.02.2022 issued by respondent No.2 and the order passed on 22.03.2022 as well as the order passed on 11.08.2023 dismissing the appeal filed by the petitioner as being time barred.
3. Brief facts of the case are that the petitioner is a proprietorship firm registered under both the U.P. Goods and Service Tax Act (*hereinafter called as "UPGST Act"*) and Central Goods and Service Tax Act (*hereinafter called as "CGST Act"*). The dispute is for the period June, 2019, Financial Year 2019-20. The petitioner is in the business of trading of MS Angle and steel items. Notice under Section 74(1) of the Act was issued on 17.02.2022 to which no reply was given by petitioner-firm. The Taxing Authority, on 22.03.2022, passed an order under Section 74(9) of the Act imposing penalty along with interest. Aggrieved by the aforesaid order, an appeal was filed before the appellate forum which was dismissed on 11.08.2023 on the ground of delay, hence this writ petition.
4. Counsel for the petitioner submitted that no opportunity of

personal hearing, as mandated under Section 75(4) of the Act, was given to the assessee before final order was passed. Reliance has been placed upon decision of Division Bench of this Court in case of **M/s Mohan Agencies vs. State of U.P. & Anr., Writ Tax No.58 of 2023** decided on 13.02.2023. Reliance has also been placed upon decision of coordinate Bench of this Court in the case of **M/s Viswkarma Furniture vs. Additional Commissioner Grade 2 & Anr., Writ Tax No.393 of 2023** decided on 12.04.2023. Reliance has also been placed upon decision in case of **Bharat Mint & Allied Chemicals vs. Commissioner Commercial Tax & 2 Ors. (2022) 48 VLJ 325.**

5. It was next contended that the Appellate Authority was not justified in rejecting the appeal on the ground of delay as in the 52nd Meeting of the GST Council held on 7th October, 2023, the Government had extended the period of filing of appeal under Section 107 of CGST Act, 2017 till 31st January, 2023 in case where order under Section 74 has been passed on or before 31st March, 2023.

6. Learned Standing Counsel while opposing the writ petition submitted that CGST Act is a special statute and Section 107 provides an inbuilt mechanism and it impliedly excludes the application of Limitation Act. According to him, once the appeal has been filed beyond the statutory period of limitation, the delay cannot be condoned. Moreover, the grounds of appeal does not disclose any valid ground for condoning the delay in filing the appeal. Reliance has been placed upon decision of Kerala High Court in case of **Penuel Nexus Pvt. Ltd. vs. The Additional Commissioner Headquarters (Appeals), Ernakulam 2023 Supreme (Kerla) 353.** Relevant para 10 of the judgment is

extracted hereas under :

"The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted."

7. Reliance has also been placed upon a decision of Hon'ble Apex Court rendered in case of **Commissioner of Customs & Central Excise vs. M/s Hongo India (P) Ltd. & Anr. 2009 (3) Supreme 120**. Reliance has also been placed upon a Division Bench judgment of this Court in case of **M.s Nagarjuna Agro Chemicals Pvt. Ltd. vs. State of U.P. & Anr. Writ Tax No. 335 of 2023** decided on 25.07.2023.

8. I have heard the respective counsels for the parties and perused the material on record.

9. Two questions have been raised through this writ petition, *firstly*, as to whether personal hearing should have been given to the petitioner before the order was passed by respondent No.2 in proceedings under Section 74?, and *secondly*, whether the period of limitation in filing the appeal stood extended pursuant to 52nd Meeting of the GST Council held on 7th October, 2023 and the benefit be passed on to the petitioner?.

10. Section 75(4) of the Act provides for an opportunity of hearing to an assessee where a request is received in writing from the person chargeable with tax or penalty or whether adverse decision is contemplated against such person. It is not in dispute that a show cause notice was issued to the petitioner-assessee on 17.02.2022. The notice remained unattended and was not replied. The Taxing

Authorities proceeded with the matter and passed order under Section 74(9) on 22.03.2022.

11. The decision relied upon by the assessee in case of **M/s Mohan Agencies (supra)** and **M/s Viswkarma Furniture (supra)** are distinguishable in the present set of case, as in both the cases the notice was replied by the assessee but opportunity of personal hearing was not accorded and thus the Court proceeded to quash the order and remanded back the matter for deciding afresh. In the instant case, no reply was given by the assessee, thus, provisions of Section 75(4) would not be attracted as neither any request was made for granting opportunity of hearing nor any explanation was furnished to the contents of notice. The argument raised by the assessee's counsel cannot be accepted as the assessee having knowledge of the notice did not appear before the authorities and now, at this stage, seek quashing of the show cause notice as well as order passed by the authorities.

12. Now coming to the second issue as to the period of extension of limitation for filing the appeal, this Court finds that no plausible ground has been taken in the appeal filed by the assessee for condoning the delay except that the earlier counsel, to whom papers were handed over, did not file the appeal and by mistake the delay had occurred. Moreover, Section 107(4) of the Act provides that the Appellate Authority may, if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three or six months, as the case may be, allow it to be presented within further period of one month. Once it is found that limitation period having been prescribed in the statute had expired, the Appellate Authority rightly proceeded to dismiss the appeal.

13. In **Penuel Nexus Pvt. Ltd. (supra)**, it has been held that the Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act.

14. In view of the above, the order of the Appellate Authority needs no interference by this Court. However, as the GST Council has extended the period of limitation for filing appeal against the order passed under Section 74 of the Act till 31st January, 2024 under the amnesty scheme, this Court remands back the matter to the Appellate Authority to examine the question of limitation in the light of the provisions contained in 52nd Meeting of the GST Council held on 7th October, 2023 and pass appropriate order on the appeal of the petitioner -assessee.

15. Considering the facts and circumstances of the case, this Court finds that no interference is required in the notice dated 17.02.2022 issued by respondent No.2 as well as consequential order passed on 22.3.2022 passed by respondent No.2. However, the appellate order dated 11.08.2023 is set aside to the extent that the matter is remanded back to the Appellate Authority to consider the appeal afresh especially on the ground of limitation in view of amnesty scheme of the GST Council.

16. With the aforesaid observations, the writ petition stands *disposed of*.

Order Date :- 19.10.2023
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