

**HIGH COURT OF TRIPURA
AGARTALA**

**WP(C) No.224 of 2023
along with
WP(C) No.225 of 2023
WP(C) No.253 of 2023**

Kamrul Nahar

.....Petitioner(s);

Versus

The Union of India & others

.....Respondent(s).

For Petitioner(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. Biplabendu Roy, Advocate.

For Respondent(s) : Mr. Biswanath Majumder, CGC,
Mr. Karnajit De, Addl. G.A.,
Mr. Paramartha Datta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

03/01/2024

All the three writ petitions relate to the same petitioner but concerning different tax periods i.e. (i) WP(C) No.224/2023 relates to tax period April, 2020 to March, 2021, (ii) WP(C) No.225/2023 relates to tax period April, 2019 to March, 2020 and (iii) WP(C) No.253/2023 relates to tax period April 2021 to March, 2022. In all the three writ petitions, the show cause notices were issued under Section 73(1) of the Tripura State Goods & Services Tax Act, 2017 [Act of 2017, *for short*] including the summary of the show cause notice in Form GST DRC-01 on 11.10.2022. The adjudication order in all these three writ petitions and the summary of the order in Form GST DRC-07 are also of the same date.

2. Writ petitioner did not invoke the appellate remedy under Section 107(1) of the Act of 2017 within the time stipulated under Section 107(4) of the Act of 2017. He straightaway approached this Court, but after

expiry of the period of limitation. Though several grounds on facts and law have been taken by the writ petitioner including the ground of non-compliance of principles of natural justice and the procedure prescribed under Section 73(1) of the Act of 2017, but the respondents have taken objection as to the maintainability of the writ petition in view of the judgment rendered by the Apex Court in the case of *Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited* reported in *(2020) 19 SCC 681*. The respondents contended that writ petition under fiscal statutes such as the GST Act should not be entertained if the petitioner has approached this Court after the expiry of the period of limitation prescribed under the Act in question i.e. the TGST Act of 2017.

3. Though Counter Affidavit and Rejoinder Affidavit were filed during the proceedings of the case, but in the meantime the Finance Department (Taxes & Excise), Government of Tripura has come out with a notification dated 04.11.2023 in exercise of the power under Section 148 of the Tripura State Goods and Services Tax Act, 2017 allowing a window of opportunity to taxable persons who could not file an appeal against the order passed by the proper officer on or before 31.03.2023 under Section 73 or 74 of the said Act within the time period specified under Section 107(1) read with sub-section (4) of the Act subject to the conditions stipulated thereunder. This window of opportunity is also available to such taxable persons whose appeal was rejected solely on the grounds that it was not filed within the time period specified in Section 107 of the Act. The notification dated 04.11.2023 is extracted in extenso hereunder :

“1-11(91)TAX/GST/2023(Part-III)

Dated, Agartala the 4th November, 2023

NOTIFICATION

In exercise of the powers conferred by section 148 of the Tripura State Goods and Services Tax Act, 2017 (Tripura Act No.9 of 2017) (hereinafter referred to as the said Act), the State Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in **FORM GST APL-01** in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January, 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-
(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
(b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Tripura State Goods and Service Tax Rules, 2017, shall mutatis mutandis, apply to an appeal filed under this notification.

By Order of the Governor,

(Rakhi Biswas, TCS-SSG)
Ex-Officio Additional Secretary
Finance Department
Government of Tripura”

4. Mr. B.N. Majumder, learned senior counsel for the petitioner, submits that though there are good grounds on merits of the case and also on violation of principles of natural justice for the petitioner to agitate, but the petitioner may be allowed opportunity to prefer an appeal within the cut-off date i.e. 31.01.2024 prescribed under notification dated 04.11.2023 subject to the conditions stipulated therein including the requirement of pre-deposit. Learned senior counsel for the petitioner however submits that the petitioner

is facing constraint in approaching the appellate authority as all his bank accounts have been attached in recovery proceedings under Section 79 of the Act of 2017. The attachment orders are under challenge in WP(C) No.253/2023. Learned senior counsel also submits that the petitioner may be allowed to make the pre-deposit as stipulated under the notification dated 04.11.2023 through the bank accounts maintained in the ICICI bank. He submits that the petitioner may also be allowed to raise all such grounds of fact and law as are available to the petitioner before the appellate authority.

5. Mr. Karnajit De, learned Additional Government Advocate for the respondents-State, submits that for the purposes of availing the remedy of appeal, petitioner may be allowed to remit the requisite pre-deposit from the accounts maintained by the petitioner in the ICICI bank to the extent of the pre-deposit.

6. Having considered the submission of learned counsel for the parties, we are of the view that at this stage, this Court is not required to enter into the issues of fact or law raised by the writ petitioner, as the petitioner has the liberty to invoke the appellate remedy under Section 107(1) of the Act of 2017 by the cut-off date 31.01.2024 in terms of the notification dated 04.11.2023. It however appears that the bank accounts of the petitioner have been attached in recovery proceedings. Therefore, in order to allow the petitioner to effectively avail the remedy of appeal as provided under the notification dated 04.11.2023, it is directed that the Branch Manager, ICICI Bank, Bishalgarh Branch would permit the petitioner to remit the amount of pre-deposit as required in terms of the

notification dated 04.11.2023 from the attached bank accounts on such application being made through the permissible mode for preferring the appeal within the cut-off date 31.01.2024. If such an appeal is filed upon compliance of the conditions stipulated in the notification dated 04.11.2023 by 31.01.2024, the appellate authority would consider the appeal in accordance with law as expeditiously as possible, preferably within a period of 12(twelve) weeks from the date of filing of the appeal. It is needless to say that the petitioner shall not take any unnecessary adjournments.

7. The writ petitions are disposed of. Let it be made clear that we have made no comments on the merits of the case of the parties.

Pending application(s), if any, shall also stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

Pijush/

MUNNA SAHA

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