

**HIGH COURT OF TRIPURA
AGARTALA**

Review Pet. 19 of 2024

M/s R.A. Mazumder, A Proprietorship Firm having its office at Panchgram, Hailakandi, Assam, represented by the Proprietor, Sri Rafique Ahmed Mazumder.

.....Petitioner

-VERSUS-

- 1. Union of India**, represented by its Secretary, to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
- 2. The Commissioner**, Central GST, Central GST Bhawan, Netaji Chowmuhani, Mantri Bari Road, West Tripura, 799001.
- 3. The Additional Commissioner**, Central GST, Central GST Bhawan, Netaji Chowmuhani, Mantri Bari Road, West Tripura, 799001.

....Respondents

For Petitioner (s)	:	Ms. Nitu Hawelia, Advocate
For Respondent (s)	:	Mr. P. Datta, Advocate Mr. B. Majumder, Deputy SGI
Date of hearing & delivery of judgment & order	:	14.08.2024
Whether fit for reporting	:	Yes / No

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

JUDGMENT & ORDER (ORAL)

I.A. 1/2024

Upon hearing learned counsel appearing for the parties and upon consideration of the explanation of 7 days delay in preferring the instant Review Petition, delay being minor is condoned.

I.A. stands disposed of.

Review Pet. 19 of 2024

Heard Ms. N. Hawelia, learned counsel appearing for the petitioner. Also heard Mr. P. Datta, learned counsel appearing for respondent no. 2 and 3 and Mr. B. Majumder, learned Deputy SGI for respondent no. 1.

- 2.** The writ petition was dismissed following the ratio laid down in *Assistant Commissioner (CT) LTU, Kakinada & others vs. Glaxo Smithkline Consumer*

Health Care Limited, reported in (2020) 19 SCC 681, as in the opinion of the court, the writ petition was filed after expiry of the period of limitation for preferring an appeal under Section 107(1) read with Section 107(4) of the CGST Act i.e. on 05.08.2023 whereas the Order in Original was dated 30.03.2023.

3. The primary ground for seeking of review raised by the petitioner is that the provisions of CGST Act, 2017, would not be applicable to the case of the petitioner since the proceedings under Finance Act, 1994 for realization of Service Tax dues related to financial year 2016-17 which provides for a different period of limitation. As such, on that ground review has been sought.

5. We have examined the contention of the petitioner. Though from the Order in Original dated 30.03.2023, at para 2, in the cause title, it is apparent that the period for preferring an appeal by a person aggrieved against the Order in Original before the Commissioner appeals is 2 months from the date of communication of the order, but learned counsel for the petitioner had insisted that as per some subsequent amendment it is 3 months. That date would also count from the date of communication of the order. Therefore, the writ petition was filed after expiry of the period of limitation.

6. From perusal of para 11 of the writ petition, it is apparent that the petitioner has himself stated that the Order in Original was passed on 30.03.2023, but the same was communicated to the petitioner on 10.04.2023. Even counting 3 months period, as canvassed by learned counsel for the petitioner, therefrom it would expire by 09.07.2023 whereas the writ petition was filed on 05.08.2023. Learned counsel for the review petitioner then submits that the delay as per Section 85 of the Finance Act is condonable for a further period of 3 months.

7. We are afraid that this condonable period would not come for the purposes of counting the period of limitation which is the original period prescribed under the Act i.e. 2 months as per Order in Original, but 3 months as per learned counsel for the petitioner. Therefore, we are of the view that even though the provisions of CGST Act may not be applicable but applying the provisions of Finance Act, 1994 also the writ petition was filed after expiry of the period of limitation.

8. Hence, we do not find any error in the impugned judgment to that extent warranting interference. Accordingly, the review petition is dismissed.

9. At the end, learned counsel for the petitioner submits that liberty may be granted to the petitioner to pursue his remedy before the appellate forum and the appellant authority may be directed to consider the delay sympathetically as the petitioner was pursuing his remedy on erroneous advice before this court.

10. The petitioner is at liberty to approach the appellate authority, if permissible in law and take all grounds for condonation of delay, as aforesaid.

(ARINDAM LODH),J

(APARESH KUMAR SINGH), CJ

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