

GAHC010153082023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7208/2023

MOHAMMAD WAISDULLAH @ MD. WAISDULLAH
SON OF LATE MD. YAKUB
RESIDENT OF KALAPANI ROAD,
P.O. AND P.S.- DOOMDOOMA,
DISTRICT- TINSUKIA, ASSAM,
PIN- 786151.

VERSUS

UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF FINANCE.

2:THE COMMISSIONER OF CENTRAL GOODS AND SERVICE TAX
DIBRUGARH
MILAN NAGAR LANE F

P.O.- C.R. BUILDING
DIBRUGARH- 786001.

3:THE ADDITIONAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
DIBRUGARH
C.R BUILDING
DIBRUGARH- 786001.

4:THE COMMISSIONER (APPEALS)
CGST
CENTRAL EXCISE AND CUSTOMS
3RD FLOOR
GST BHAWAN

KEDAR ROAD
MACHKHOWA

GUWAHATI- 781001

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.04.2024

Heard Mr. R.S. Mishra, learned counsel for the petitioner as well as Mr. S.C. Keyal, learned SGCT, representing respondent nos. 2 to 4.

2. In brief, the case of the petitioner is that he is engaged in the business of construction, repairs and maintenance of public roads constructed by various authorities. It is claimed that the activities undertaken by the petitioner are all exempted from levy of service tax in terms of notification no. 25/2012. The petitioner was served with a show cause notice dated 29.09.2020 and the demand of service tax to the extent of Rs. 1,17,06,467/- was made, which was thereafter confirmed vide the impugned order-in-original dated 04.02.2022.

3. Aggrieved by the said order-in-original, the petitioner had preferred an appeal. The said appeal was purportedly filed on 20.05.2022. In this regard the learned counsel for the petitioner has referred to Annexure-E to the writ petition which contains a stamped endorsement by the Office of the Commissioner, CGST Dibrugarh bearing date stamp of 20th May, 2022. However, the said

appeal was summarily rejected by the Commissioner (Appeal), CGST, Central Excise & Customs, Guwahati vide impugned order No. DIN: 20230570AO313837 dated 24.05.2023 on the ground that the petitioner had not filed the appeal within the stipulated period of 2(two) months from the date of impugned order-in-original as envisaged under Section 85 of the Finance Act, 1994.

4. The learned counsel for the petitioner has referred to the order dated 10.01.2022, passed by the Supreme Court of India in Miscellaneous Application No.21/2022 in Miscellaneous Application No.665/2021 in *Suo Motu* Writ Petition(C) No.3/2020, in Re: Cognizance for Extension of Limitation by which it was directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings, further providing that in cases where limitation would have expired during that period, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. It was provided that in the event the actual balance period of limitation remaining, w.e.f. 01.03.2022 is greater than 90 days, that longer period shall apply.

5. The learned Standing counsel for the CGST has opposed the prayer made in the writ petition and it is submitted that under the provisions of Section 85 of the Finance Act, 1994, the condonable delay is initially for period of 60 days beyond the appealable period of 90 days and thereafter, further 30 days times is condonable. Accordingly it is submitted that the Appellate Authority did not have any power to extend the period of limitation beyond the prescription of Section 85 of the Finance Act, 1994.

6. Having considered the submissions made by both sides, the Court is of

the opinion that the order dated 10.01.2022 passed by the Supreme Court on India in M.A. No.21/2022 would have the effect of extending the period of limitation in terms of the direction contained therein. Therefore, notwithstanding the prescription of limitation as provided under Section 85 of Finance Act, 1994, the delay on part of the petitioner to approach the Appellate Authority i.e. the Commissioner (Appeals), CGST, Central Excise and Customs was condonable and the appeal ought not to have been dismissed the appeal filed by the petitioner.

7. It may be mentioned that the learned standing counsel for the CGST has also raised an objection to the effect that the impugned order is liable to be put to challenge before the Appellate Tribunal. In this regard, the Court is of the considered opinion that as the order dated 10.01.2022, passed by the Supreme Court of India in M.A. Case No.21/2022 has the effect of extending the period of limitation, this Court in exercise of power under Article 226 of the Constitution of India would not relegate the petitioner to another round of litigation before the Appellate Tribunal and the alternative remedy would not dissuade this Court from interfering with the impugned order in appeal dated 24.05.2023 passed by the Commissioner (Appeals) CGST, Central Excise and Customs in respect of the appellant as the said order is vitiated by non-consideration of the said order dated 10.01.2022, passed by the Supreme Court of India, because the said order enforceable under Article 162 of the Constitution of India.

8. Resultantly, this writ petition stands allowed by interfering with the said impugned order No. DIN: 20230570AO313837 dated 24.05.2023 and the said order is set hereby set aside and the said appeal is remanded back for fresh consideration by the Commissioner (Appeals), CGST Central Excise and

Customs on merit.

9. Insofar as issue of limitation is concern, the Appellate Authority shall be guided by order dated 10.01.2022 passed be the Supreme Court of India, Miscellaneous Application No.21/2022.

10. It is provided that the petitioner shall serve certified copy of this order before the Commissioner (Appeals), CGST Central Excise and Customs within a period of 10(ten) days from today from the date of receipt of the certified copy of this order and the petitioner also shall appear before the said authority on 30.04.2024 and await instruction from the said learned authority.

11. This writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant