

HIGH COURT OF CHHATTISGARH, BILASPUR**WPT No. 97 of 2020**

1. Nandan Steels And Power Limited, A Company Incorporated Under The Companies Act, 1956, Having Its Office At Sondra, Behsar Road, Siltara Industrial Area, Block Dharsiwa, District Raipur, Chhattisgarh, Through Its Director Manish Kumar Agrawal, Son of Subhash Kumar Agrawal, Aged About 51 Years

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Naya Raipur, District : Raipur, Chhattisgarh
2. The Commissioner, State Goods And Service Tax Department, Civil Lines, Raipur, District : Raipur, Chhattisgarh
3. The Joint Commissioner (Appeals), State Goods And Service Tax, Civil Lines, Raipur, District : Raipur, Chhattisgarh
4. The Adjudicating Authority (Assistant Commissioner), State Goods And Service Tax, Civil Lines, Raipur, District : Raipur, Chhattisgarh

----- Respondents

For Petitioner	:	Mr. Ashish Surana, Advocate
For State	:	Mr. Siddharth Dubey, Dy. Govt. Adv.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

27.10.2020

- 1.** The challenge in the present writ petition is to the order dated 20.12.2019 passed by the Respondent No. 3 whereby the appeal u/s 107 of the Chhattisgarh G.S.T Act (hereinafter in short referred as “the Act”) filed by the petitioner has been rejected on the ground of the same having barred by limitation.
- 2.** The facts of the case is that the petitioner was claiming certain GST Input Credit which the Adjudicating Authority disallowed vide his/her order dated 26.06.2019 (Annexure P-2). The order of the Adjudicating Authority dated 26.06.2019 was challenged by the petitioner before the Appellate Authority u/s 107 of the Chhattisgarh G.S.T. Act which stands rejected on the ground of being barred by limitation.
- 3.** It is necessary to understand at this juncture that the provisions of Section 107 of the Chhattisgarh GST Act provides for preferring an appeal against the order of the Adjudicating Authority within a period of three months from the date of his/her order is communicated to the persons. However, in case, if the appeal is not filed within a period of three months and if sufficient cause is presented/shown within a further period of one month from the date of expiry of the three months' limitation period, the Appellate Authority has got the powers to condone the delay. In the instant case, though the order of the Adjudicating Authority was passed on 26.06.2019 the appeal was preferred on 16.12.2019 that is much beyond that further period of one month within which the Appellate Authority had the power to condone the delay so as

to entertain the appeal.

4. The counsel for the petitioner submits that the petitioner had the knowledge of the order passed by the Adjudicating Authority and he had immediately taken steps for challenging the same by instructing his /her Chartered Accountant for the same. However, because of the ill-health of the Chartered Accountant, the appeal could not be filed within the stipulated period and subsequently the same was filed beyond the prescribed period of three months and beyond the further period of one month within which the Appellate Authority should have condoned the delay. According to the counsel for the petitioner the delay arose on the grounds beyond the control of the petitioner. That the present writ petition has been filed seeking for a sympathetic consideration on the ground under which the appeal could not be filed and the matter be remitted back for considering the case on its own merits. The other ground was that while rejecting the appeal, the Appellate Authority has not granted any opportunity of hearing explaining the delay for which reason also, the impugned order needs to be interfered with exercising the writ jurisdiction.
5. Shri Siddharth Dubey, learned Dy. Govt. Advocate referring to Section 107 of the Chhattisgarh GST Act submits that once when the law makers themselves have prescribed certain period of limitation for the authority to entertain an appeal at the first instance and the Appellate Authority further being conferred with the powers to condone the delay

again within a further stipulated period, the Appellate Authority does not have any further power to entertain the appeal under any circumstances whatsoever beyond that extended period within which the appeal had to be filed. The contention of the State counsel was that the limitation being three months time from the date the impugned order is communicated and the Appellate Authority being conferred with additional one month's time for condoning the delay, if an appeal is filed within the same. Any appeal beyond that further period of thirty days or one month time from the expiry of the initial three months' period of limitation, the authorities had exercised his/her powers to entertain the appeal and the same has rightly been rejected. The State counsel thus submitted that there is hardly any scope of interference and thus prayed for rejection of the writ petition.

6. Having heard the contentions put forth by either side, the undisputed factual matrix of the case is that the Adjudicating Authority had passed the order on 26.06.2019, there is no dispute so far as the order being communicated to the petitioner and as such the appeal ought to have been filed by 26.09.2019 that is three months' period provided u/s 107 of the Chhattisgarh GST Act of 2017. The appeal in the instant case has been filed on 16.12.2019 that is even after the three months from the date limitation expired. Sub-section 4 of Section 107 of the Chhattisgarh GST Act confers the Appellate Authority with the power to condone the delay, if the appeal is filed within a period of one month

from the date limitation stood expired.

7. The fact that there is an upper limit of one month provided in the statutes itself for preferring an appeal beyond the prescribed period of three months itself establishes the fact that beyond that extended period of one month after the expiry of period of limitation, the Appellate Authority becomes *functus officio* and would not be in a position to entertain the appeal nor does he have the power to condone the delay. The issue so far as condonation of delay is concerned beyond the limit permissible under the statutes came up for consideration before the Supreme Court recently in the case of ***M/s N.V. International vs. State of Assam and others***. In the said judgment, the Hon'ble Supreme Court though under the provisions of Arbitration Act had considered the aspect whether the authority could condone the delay beyond the permissible period provided under the statutes, disallowing the contention and dismissing the appeal observed that once when the period is prescribed beyond the said period, the authority does not have the power to entertain the application for condoning the delay or else it will defeat the statutory purpose.
8. A similar view has further been reiterated by the Supreme Court in the case of ***Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Limited***. Wherein again, the Hon'ble Supreme Court taking the same stand that beyond the stipulated period, the Appellate Authority could not have condoned the

delay even if certain extraordinary situation is given seeking condonation of delay.

“14. priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in *Electronics Corporation of India Ltd.* (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in *Panoli Intermediate (India) Pvt. Ltd. v. Union of India*¹⁹ and also of the Karnataka High Court in *Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I), Bangalore*²⁰. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction - by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner choses to approach

the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in *Oil and Natural Gas Corporation Limited* (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. ”

9. In view of the authoritative decision rendered by the Hon'ble Supreme Court in the aforesaid two judgments, this Court does not find a strong case made out by the counsel for the petitioner in the instant case calling for an interference to the order passed by the Respondent No. 3 vide his/her order dated 20.12.2019. As a consequence, the writ petition fails and is accordingly, rejected.

**Sd/-
P. Sam Koshy
Judge**