

\$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C) 4368/2020**

M/S SACHIN ENTERPRISES

THROUGH SOLE PROP. SH. SACHIN BANSAL Petitioner

Through: Ms. Vibhooti Malhotra, Advocate.

versus

ASSISTANT COMMISSIONER

DIVISION – NARELA

..... Respondent

Through: Mr. Harpreet Singh, Advocate

%

Date of Decision: 21st July, 2020

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM APPL. 15732/2020

Allowed, subject to just exceptions.

W.P.(C) 4368/2020

1. The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the order dated 19th September, 2019 passed by the respondent under Section 54 of the Central Goods and Services Tax Act, 2017 whereby the petitioner's refund

application has been rejected on the ground that it involves multiple tax periods.

3. At the outset, Mr. Harpreet Singh, learned counsel for the respondent states that the opening page of the impugned order itself makes it abundantly clear that the said order is appealable before the Additional Commissioner, GST and instead of exhausting the remedy of appeal available to the petitioner, it has directly rushed to this Court, which is impermissible. In support of his contention, he relies upon the order dated 20th July, 2020 passed by a Coordinate Division Bench of this Court in ***M/s Saraf Industries Through Sole Prop Sh Akhil Saraf v/s Assistant Commissioner Division Narela GST Delhi North*** bearing ***W.P. (C) No. 4338/2020***.

4. Ms. Vibhooti Malhotra, learned counsel for the petitioner states that the impugned order has been passed by the Assistant Commissioner in a batch of petitions seeking refund orders and no specific order on the merits of the petitioner's case has been passed while rejecting its refund application. Learned counsel also seeks to rely on an interim order dated 21st January, 2020, passed by a Coordinate Division Bench in ***W.P. (C) No. 627/2020*** tilted ***M/s Pitambra Books Pvt. Ltd vs. UOI and Ors.*** to urge that the Division Bench has expressed a view which goes in favour of the petitioner.

5. Keeping in view the aforesaid order dated 20th July, 2020 passed by a Coordinate Division Bench, we are not inclined to entertain the present petition when the petitioner has an equally alternate efficacious remedy of preferring an appeal before the Additional Commissioner, GST. The present petition is accordingly disposed of with liberty granted to the petitioner to seek its remedies against the impugned order before the Appellate Authority,

along with an application for condonation of delay. It is made clear that delay alone will not be a ground for the Appellate Authority to reject the appeal that may be preferred by the petitioner on merits. The petitioner is permitted to rely on the interim order dated 21st January, 2020, passed by a Division Bench of this Court in **W.P. (C) No. 627/2020**, which shall be duly taken into consideration by the Appellate Authority. The Appellate Authority shall dispose of the appeal by way of a speaking order within eight weeks of its filing.

6. With the aforesaid directions the present petition stands disposed of.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

SANJEEV NARULA, J

JULY 21, 2020

sb