IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.16346 of 2022

M/s. Sun Bloom Construction	....	*Petitioner*

Mr. Jagamohan Pattnaik, Advocate

-versus-

Union of India & Others	....	*Opposite Parties*

Mr. Avinash Kedia, Jr. Standing Counsel for CGST, Central Excise & Customs

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
26.09.2022

Order No.

01. This matter is taken up by virtual/physical mode.

1. Assailing the Order-in-Original No.31/ACCE/ST/SBP-1/2021, dated 16th December, 2021 passed under Sections 73, 75 & 78 of Chapter-V of the Finance Act, 1994 by the Assistant Commissioner, GST & Central Excise, Sambalpur-I Division, Sambalpur for the period 2014-15, the Petitioner has approached this Court invoking provisions of Article 226/227 of the Constitution of India.

2. Circumventing alternative remedy of Appeal provided under the said Act, the Petitioner contended that though its transactions during the aforesaid period were covered within the fold of the Mega Exemption Notification No. 25/2012-Service Tax dated 20th June, 2012, the authority concerned failed to grant appropriate relief. It is also pleaded that the order dated 16th December, 2021 (Annexure-6) has been passed after the expiry of six months from the date of provisional order i.e., Demand-cum-Show Cause notice dated 30th September, 2019 vide Annexure-4, the Order-in-original is nullity being barred by limitation.

3. Mr. Avinash Kedia, Junior Standing Counsel for CGST, Central Excise and Customs submitted that the Petitioner has not availed the remedy of Appeal as envisaged under Section 85 of the Finance Act. Having filed writ petition after the period of outer limit specified under the said provision, the writ petition is not maintainable.

4. Section 85 is reproduced herein below to ascertain the period within which the Petitioner was required to file Appeal against Order-in-Original dated 16th December, 2021:-

> ***"85. Appeals to the Commissioner of Central Excise (Appeals).—***
>
> *(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).*
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> *(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.*
>
> *(3) An appeal shall be presented within three months from the date of receipt of the decision or order of such adjudicating authority, relating to service tax, interest or penalty under this Chapter made before the date on which the Finance Bill, 2012 receives the assent of the President:*
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> *Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months, allow it to be presented within a further period of three months.*

(3A)An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter:

Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.

(4) The Commissioner of Central Excise (Appeals) shall hear and determine the appeal and, subject to the provisions of this Chapter, pass such orders as he thinks fit and such orders may include an order enhancing the service tax, interest or penalty:

Provided that an order enhancing the service tax, interest or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) Subject to the provisions of this Chapter, in hearing the appeals and making order under this section, the Commissioner of Central Excise (Appeals) shall exercise the same powers and follow the same procedure as he exercises and follows in hearing the appeals and making orders under the Central Excise Act, 1944."

5. The Petitioner has not placed on record any material as to the date of receipt of order dated 16th December, 2021. In view of aforesaid sub-section (3A) of Section 85, the Petitioner was required to file Appeal within two months i.e., on or before 15th February, 2021 and the condonable period was one month thereafter which lapsed on 15th March, 2021.

6. This Court taking cognizance of the fact that the Hon'ble Supreme Court in *Miscellaneous Application No.21 of 2022 in*

Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition(c) No. 3 of 2020 vide order dated 10th January, 2022 reported as *Cognizance for Extension of Limitation, In re, (2022) 3 SCC 117 = (2022) 1 SCC (Cri) 580 = (2022) 2 SCC (Civ) 46 = (2022) 1 SCC (L&S) 501 = 2022 SCC OnLine SC 27,* extended the period of limitation stipulated in statutes in view of Covid-19 pandemic situation and passed the following order:

"*1. In March 2020, this Court took suo motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/suits/appeals/all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the Covid-19 Pandemic.*

2. On 23-3-2020, this Court directed [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] extension of the period of limitation in all proceedings before courts/tribunals including this Court w.e.f. 15-3-2020 till further orders. On 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , the order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] was brought to an end, permitting the relaxation of period of limitation between 15-3-2020 and 14-3-2021. While doing so, it was made clear that the period of limitation would start from 15-3-2021.

3 Thereafter, due to a second surge in Covid-19 cases, the Supreme Court Advocates-on-Record Association (Scaora) intervened in the suo motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] relaxing limitation. The aforesaid Miscellaneous Application No. 665 of 2021 was disposed of by this Court vide order dated 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , wherein this Court extended the period of limitation in all proceedings *before the courts/tribunals including this Court w.e.f. 15-3-2020 till 2-10-2021.*

4. The present miscellaneous application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the Covid-19 and the drastic surge in the number of Covid cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

(i) Allow the present application by restoring the order dated 23-3-2020 passed by this Hon'ble Court in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] ; and

(ii) Allow the present application by restoring the order dated 27-4-2021 passed by this Hon'ble Court in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] ; and

(iii) Pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

I. The order dated 23-3-2020 [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] is restored and in continuation of the subsequent orders dated 8-3-2021 [Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452 : (2021) 3 SCC (Civ) 40 : (2021) 2 SCC (Cri) 615 : (2021) 2 SCC (L&S) 50] , 27-4-2021 [Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231 : 2021 SCC OnLine SC 373] and 23-9-2021 [Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947] , it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

III. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by the learned Senior Counsel, MA No. 29 of 2022 is dismissed as withdrawn.”

7. In terms of said order of the Hon'ble Supreme Court, the 90 days period as granted lapsed on 29th May, 2022.

8. The Petitioner, in the aforesaid circumstances, was required to file the writ petition on or before 29th May, 2022. Since, the present writ petition has been filed on 30th June, 2022, there is no scope for entertaining the writ petition as had the Petitioner challenged the order-in-original in appeal, it was required to do so by that date as set by the Hon'ble Supreme Court. This Court is fortified by a Division Bench decision of this Court rendered in the case of *Orissa Mineral Development Co. Vrs. Commissioner of*

Sales Tax, AIR 1960 Ori 79 = (1960) 11 STC 12 (Ori), wherein it has been laid down as follows:

> ***"****8. …… It is true that the existence of an alternative remedy may not always be a sufficient ground for this Court to refuse to exercise its jurisdiction under Article 226 and cases may arise where the unconstitutionality or the illegality of the order under challenge is so apparent that notwithstanding the existence of the alternative remedy this Court may interfere under that Article. This principle has been emphasized in a recent decision of this Supreme Court reported in AIR 1958 S.C. 86, U.P. State Vrs. Md. Nooh.* ***But at the same time a party should not be permitted to escape the rigorous effects and the law of limitation by applying to this Court under Article 226 after the expiry of the period prescribed by law to get relief from the appropriate revisional authority and appellate authorities****."*

9. Under the aforesaid premise, this Court is not inclined to exercise the extraordinary jurisdiction vested under Article 226 of the Constitution of India. Hence, the writ petition is liable to be dismissed and accordingly, the Court does so.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant September 26, 2022 Cuttack