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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 15631 OF 2022

M/s. Morya Facility Management
Service Pvt Ltd

... Petitioner

Vs.

Union of India and Ors

... Respondents

Mr Rushikesh C. Barge, Advocate for the Petitioner.

**CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.**

DATE : 20 DECEMBER 2022

P.C.:

Heard learned counsel for the Petitioner.

2. Petitioner has challenged the Order passed in Appeal by the Additional Commissioner(Appeals-I), Central Tax, CGST, Pune. The Appeal is dismissed as time barred under Section 107(1) & (4) of Central Goods and Services Act, 2017.

3. The Petitioner sought to contend before the Appellate Authority that in view of the Order passed by the Hon'ble Supreme Court in Miscellaneous Application No. 21 of 2022 in Suo Moto Writ Petition No. 03 of 2020 under Article 142 of the Constitution of India, certain periods of limitation in instituting judicial or quasi judicial proceedings were excluded. The Appellate Authority has taken said judgment for consideration and has held even assuming that a period from 15 March

2020 till 28 February 2022 is to be excluded from calculating the period of limitation, it observed that since the Appeal is time barred, Section 107 of the Act, 2017 provides for specific time limit and there is no dispute that Section 5 of Limitation Act does not apply.

4. The learned counsel for the Petitioner sought to contend that the power under Article 226 of the Constitution of India can be exercised even under such circumstances and the Authority can be directed to condone the delay and the order of the original authority can set aside in writ jurisdiction. The Hon'ble Supreme Court in case of *Assistant Commissioner(CT)LTU, Kakinanda and Ors v M/s. Glaxo Smith Kline Consumer Health Care Ltd*,¹ has examined the issue. The Hon'ble Supreme Court observed that once proceedings are barred by limitation under a statute the legislative mandate cannot be overcome by issuing a writ under Article 226 of the Constitution of India contrary to the legislative mandate.

5. Writ petition therefore cannot be entertained and is accordingly dismissed.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)

¹ 23(2012)12 SCC 613, decided on 6.5.2020