# IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR

## WRIT PETITION NO. 1458/2022

(M/S A.K. CONSTRUCTION, KORPANA **VERSUS** THE COMMISSIONER (APPEALS) CGST AND CENTRAL EXCISE, NAGPUR & ANOTHER)

| Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders. | Court's or Judge's order |
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Shri P.V. Upadhyay, counsel for the petitioner.
Shri S.N. Bhattad, counsel for the respondents.

**CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.**
**DATE : SEPTEMBER 15, 2022.**

P.C.

**RULE.** Rule made returnable forthwith and heard the learned counsel for the parties considering the short issue involved.

2. The petitioner is a proprietor of a construction and repair company having Goods and Service Tax registration. On 01.01.2020, the Superintendent, Goods and Service Tax cancelled the said registration on the ground that the petitioner had failed to file his GSTR 3B Returns for a period of six months from May-2019. Being aggrieved by the aforesaid order, the petitioner preferred appeal before the Commissioner (Appeals) CGST and Central Excise, Nagpur on 11.08.2021. By the impugned order the appeal has been dismissed by holding it to be time barred.

3. The learned counsel for the petitioner submitted that presently the Goods and Service Tax Appellate Tribunal under Section 112 of the Central Goods and Service Tax Act, 2017 has not been constituted and hence the petitioner had approached this Court. He submits that pursuant to various orders passed by the Hon'ble Supreme Court in *Re : Cognizance for Extension of Limitation*, the period of limitation during the pandemic was extended from time to time. The initial order was passed on 23.03.2020 and by the order dated 10.01.2022 the period of limitation was extended till 28.02.2022. It is therefore submitted that since in the present case the appeal was filed before the Commissioner (Appeals) during that period the same ought to have been entertained on merits. Thus it is submitted that the impugned order be set aside and the appeal be directed to be decided on merits.

4. Shri S.N. Bhattad, learned counsel for the respondents sought to support the order passed by the respondent no.1. He however did not dispute the fact that the period of limitation was extended from time to time by various orders passed by the Hon'ble Supreme Court, the last such extension being operative till 28.02.2022.

In the aforesaid facts as the Appellate Tribunal is presently not functioning, we are inclined to entertain the writ petition.

5. It is not in dispute that the petitioner filed an appeal on 11.08.2021 which was within the extended period of limitation in view of the orders passed by the Hon'ble Supreme Court in *Re : Cognizance for Extension of Limitation*. In fact the period of limitation was extended till 28.02.2022 by the order dated 10.01.2022. In that view of the matter, we find that the respondent no.1 was not justified in dismissing the appeal by holding it to be time barred.

6. Accordingly, the following order is passed:-

I) The order dated 24.08.2021 (03.09.2021) passed by the respondent no.1 is set aside.

II) The appeal preferred by the petitioner challenging the order dated 01.01.2020 is restored before the respondent no.1 for fresh consideration on merits. The appeal shall be decided on its own merits and in accordance with law by the respondent no.1.

III) All points raised on merits are kept open.

7. The writ petition is disposed of in aforesaid terms. Rule accordingly. No costs.

**(URMILA JOSHI-PHALKE, J.)** **(A. S. CHANDURKAR, J.)**

APTE

Signed By: Digitally signed byROHIT DATTATRAYA APTE
Signing Date:15.09.2022 18:30