Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 256 OF 2023

M/s. Novacare Drug Specialities Pvt. Ltd., ... Petitioner
Versus
1. State of Goa & Ors. ...Respondent

Mr. Abhijeet Kamat, Advocate *for the Petitioner.*

Ms. Maria Correia, Additional Government Advocate *for the Respondent.*

CORAM: M. S. KARNIK, J
DATED: 28th JULY 2023

ORDER

1. Heard learned counsel for the petitioner and learned Additional Government Advocate for the respondents.

2. The petitioner takes exception to an order dated 31.03.2023 passed by the respondent no. 2-Additional Commissioner of Commercial Taxes (South), refusing to condone the delay in filing appeal under section 35 of the Goa Value Added Tax, 2005. The petition is filed under the provisions of Article 227 of the Constitution of India.

3. The petitioner is a dealer registered under the Goa Value Added Tax Act, 2005 (hereinafter referred to as the *VAT Act*, for short). The petitioner filed his returns for the assessment year from 01.04.2016 to 31.03.2017. The respondent no. 3 assessed the petitioner vide order dated 04.06.2020. The order was served on the petitioner on 11.06.2020. An appeal was filed by the petitioner under section 35 of the VAT Act on 17.08.2022. The appeal was accompanied with the proof of payment of the amount as required under section 35 of the VAT Act.

4. An application seeking condonation of delay was filed. By the impugned order, the application for condonation of delay was dismissed by the respondent no.2. The respondent no. 2 found that the benefit of extension of limitation granted by the Supreme Court in the matter of **Cognizance for Extension of Limitation, In Re**[1], regarding the extension of limitation period due to Covid-19 pandemic will not enure to the benefit of the petitioner.

5. Shri Kamat, learned counsel for the petitioner, assailing the impugned order, contended that the benefit of the order passed by the Supreme Court in the case of **Cognizance for Extension of Limitation** (supra) is applicable to the petitioners.

6. Ms Maria Correia, learned Additional Government Advocate for the respondents, argued in support of the impugned order. She submitted that not only is the appeal time barred but the appeal is not even preferred within the period of 90 days from 01.03.2022,

1 (2022) 3 SCC 117

which was a concession provided by the Hon'ble Supreme Court in respect of those matters where the limitation period expired during the pandemic. Learned Additional Government Advocate relied on the decision of the Supreme Court in the case of **Sagufa Ahmed & Ors. vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.**[2] and **M/S Ss Group Pvt. Ltd. vs Aaditiya J Garg**[3] in support of her submissions.

7. I have heard the learned counsel at length.

8. The assessment order dated 04.06.2020 was served on the petitioner on 11.06.2020. Section 35 of the VAT Act provides thus :

> "35. Appeals.- (1) Any person objecting to an order affecting him passed under the provisions of this Act by an authority may appeal to Appellate Authority as may be prescribed within sixty days from the date of receipt of order by him.
>
> (2) Where the Appellate Authority is satisfied that the person has reasonable cause for not preferring an appeal within the time specified in sub-section (1), he may accept an appeal, provided it is made within one year, from the date of receipt of order by him.
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> (3) The appeal shall be in the prescribed form and shall specify in detail the grounds upon which it is made.

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2 Civil Appeal No. 3007-3008 of 2020 decided on 18.09.2020

3 Civil Appeal No. 4085 of 2020 decided on 17.12.2020

(4) Amendment of section 35. - In section 35 of the principal Act, for sub-section (4), the following sub-sections shall be substituted, namely:-

(4) No appeal under sub-section (2) shall be entertained by the Appellate authority, unless such appeal is accompanied by a satisfactory proof of the payment of whole of the undisputed amount of tax, interest and penalty and ten percent of the disputed amount of tax; interest and penalty, that may be due:

(4A) The provisions of sub-sections (4) shall be applicable also to any appeal pending before the Appellate Authority on the date of coming into force of the Goa Value Added Tax (Ninth Amendment) Act, 2016 and the appellant shall make payment as aforesaid within a period of 120 days from such commencement, failing which, such appeal shall stand abated.

(5) The appellant shall serve a copy of the appeal memo to the authority against whose order the appeal is filed.

(6) 15. Amendment of section 35.-In section 35 of the principal Act, for sub-section (6), the following sub-section shall be substituted, namely:-

"(6) After considering the appeal and after affording an opportunity of hearing, the Appellate Authority may allow it in whole or part and amend the assessment or enhance the assessment or levy tax and/or penalty and/or other amount or remand it for fresh disposal or dismiss the appeal:

Provided that before making a levy of tax, penalty or other amount and/or enhancement of assessment as the case

> may be, the appellant shall be given an opportunity of being heard."
>
> (7) The Appellate Authority shall serve the appellant, with an order in writing, of the appeal decision, setting forth the reasons for the decision."

9. A reading of section 35 would go to show that in ordinary course the petitioner should have preferred the appeal within one year from the date of receipt of the order i.e. one year from 11.06.2020 if there is a reasonable cause. The appeal therefore ought to have been filed in ordinary course, on or before 11.06.2021. This period of one year expired during the period prescribed i.e. 11.06.2020 to 28.02.2022.

10. The Hon'ble Supreme Court by its order dated 10.01.2022 passed in **Cognizance for Extension of Limitation** (supra) observed in paragraph 5 thus :

> 5. Taking into consideration the arguments advanced by 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 the M.A. No. 21 of 2022 with the following directions:
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> > 1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till

> 28.02.2022 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 03.10.2021, if any, shall become available with effect from 01.03.2022.
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> III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.
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> IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A 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.

11. The respondent no.2 while dismissing the application for condonation of delay observed thus :

"   The Appellant has paid an amount of R$.2,00,000/- vide E-challan No. 202200646493 dated 05/08/2022 and Rs.4.94,371/- vide E:-Challan No. 202200841202 dated 26/10/2022 totaling to Rs.6,94,371/- towards 10% of the disputed amount respectively.

The Assessment Order appealed against was duly served upon the Appellant/Dealer on 11/06/2020 as mentioned in the appeal memo and the said appeal memo is found filed in this office on 17/08/2022 which is not filed within the prescribed time limit of 60 days from the date of receipt of the Assessment Order. The Appellant/Dealer has filed an application for condonation of delay on 23/08/2022.

This office had issued Show Cause Notice bearing No. ADC/Appeal/VAT/33 of 2022-23/11718 dated 13/10/2022 directing the Appellant/Dealer to attend for the personal hearing on 14/12/2022 at 11.00 a. m in the matter of admission at the office of the Addl. Commissioner of Commercial Taxes (South) 'F' Wing, Osia Commercial Arcade, Near KTC Bus Stand, Margao-Goa. The said Show Cause Notice is duly served to the Appellant/Dealer by Speed post.

In response to the said notice dated 13/10/2022, Mr. Suyog Vaze, duly Authorised Representative of the Appellant/Dealer attended for the hearing in the matter of admission on 14/12/2022 and subsequently the matter was adjourned and is finally heard.

During the course of appeal hearing, this Appellate Authority stated that, the extension of limitation period covered under Order dated 10/01/2022 passed by the Hon'ble Supreme Court of India in Case No. Miscellaneous Application No. 21 .of 2022, Miscellaneous Application No. 665 of 2021, Suo Motu Writ Petition (C) No. 3 of 2020 In RE: Cognizance for Extension of Limitation with Miscellaneous Application No. 29 of 2022 is w.e.f.15/03/2020 upto 28/02/2022 and further period of 90 days for filing the appeal due to Covid-19 Pandemic.

In the present case it is revealed that, the Appellant/Dealer has filed the appeal on 17/08/2022 which is also beyond further period of 90 days as per Order dated 10/01/2022 passed by the Hon'ble Supreme Court of India. Hence, the appeal cannot be admitted for hearing on merits.

As per the provision of Section 35(1) of the Goa Value Added Tax Act, 2005, the appeal is required to be filed within a prescribed time limit of 60 days from the date of receipt of the Assessment Order.

The Appellate Authority may condone the delay if he is satisfied that, the person has reasonable cause for not preferring an appeal within the prescribed time limit of 60 days, provided it is made within one year from the date of receipt of the order.

In the instant case, the Appellant has filed the appeal beyond the period of one year from the date of receipt of the Assessment Order and also not covered under extension of limitation period granted by the Hon'ble Supreme Court of India vide Order dated 10/01/2022.

Since, there is no provision under the Goa Value Added Tax Act, 2005, to condone the delay beyond the period of one year, the delay cannot be condoned. Hence, the appeal is not admitted.

Since, the delay is not condoned the appeal is not admitted for hearing on merits.

The appeal is summarily rejected being not admitted for hearing on merits.

Appeal stands disposed off accordingly."

(emphasis mine)

Thus, the respondent no.2 was of the opinion that the appeal was not filed within the period of 90 days of the extended period provided by the Supreme Court i.e. within 90 days from 01.03.2022.

12. A reference to the various orders passed by the Supreme Court regarding the extension of limitation during the Covid-19 pandemic period is necessary. A reading of the order passed by the Supreme Court in the case of **Cognizance for Extension of Limitation** passed on March 2020, reveals that the Supreme 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. On 23.03.2020, the Supreme Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including the Supreme Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

13. 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 23.03.2020 relaxing limitation. The Supreme Court extended the period of limitation in all proceedings before the Courts/Tribunals w.e.f 15.03.2020 till 02.10.2021.

14. Thereafter, an application was filed by SCAORA on which the order dated 10.02.2022 was passed by the Supreme Court in the matter of **Cognizance for Extension of Limitation** (supra). The application was filed 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. After 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, the Supreme Court deemed it appropriate to dispose of the M.A. No. 21 of 2022 with the directions in paragraph 5, already extracted herein before.

15. A reading of the order of the Supreme Court would reveal that considering the difficulties that might be faced by the litigants in filing petitions/applications/suits/appeals/all other quasi proceedings within the period of limitation, the Supreme Court directed the extension of period of limitation. On 08.03.2021, the order dated 23.03.2020 was brought to an end permitting a relaxation of limitation between 15.03.2020 and 14.03.2021. The Supreme Court made it clear that the period of limitation would start from 15.03.2021.

16. In view of the surge in Covid-19 pandemic cases, by order dated 23.09.2021, the Supreme Court extended the period of limitation in all proceedings before the courts/tribunals w.e.f. 15.03.2020 to 02.10.2021. By the order passed on 10.01.2022 in **Cognizance for Extension of Limitation** (supra), the order dated 23.03.2020 was restored and in continuation of the subsequent orders dated 23.03.2020, 27.04.2021 and 23.09.2021, it was directed by the Supreme Court that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

17. In the present case, the respondent no.2 was of the opinion that as the appeal was filed on 17.08.2022, the same is beyond the period of 90 days as per the order dated 10.01.2022 passed by the Hon'ble Supreme Court. I find it pertinent to note that the Supreme Court restored the order dated 23.03.2020 and directed that in continuation of the subsequent orders dated 23.03.2020, 27.04.2021 and 23.09.2021, the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

18. The assessment order dated 04.06.2020 impugned in appeal before the respondent no.2, was passed during the period 15.03.2020 till 28.02.2022. The said period will have to be excluded for the purpose of limitation. According to me, the petitioner's case will not be covered by paragraph 5.3 of the Hon'ble Supreme Court's order dated 10.01.2022 in the case of **Cognizance for Extension of Limitation** (supra). The case of the petitioner will be covered by paragraph 5.1 of the Supreme Court's decision. The intent of the directions of the Supreme Court is further clear from the clarification in paragraph 5.4 of its order when Their Lordships clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the period(s) prescribed under sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A 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 the delay) and termination of proceedings. The assessment order was served on the petitioner on 11.06.2020 during this period i.e. 15.03.2020 till 28.02.2022. The starting point of limitation in case of petitioner will have to be regarded as 01.03.2022. As indicated earlier, even in respect of those statutes which prescribe an outer limit, the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the limitation period prescribed. I have no hesitation in coming to the conclusion that the starting point of limitation for the purpose of filing an appeal under section 35 of the VAT Act against the assessment order dated 04.06.2020, which was passed during the period between 15.03.2020 till 28.02.2022 will have to be computed from 01.03.2022. The period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation. The respondent no.2 was not justified in proceeding on the footing that the appeal should have been filed within a period of 90 days from 01.03.2022. A pertinent observation of the Supreme Court in the case of **Prakash Corporates vs Dee Vee Projects Limited**[4] makes a profitable, reading :

> "27.7 - We are not elaborating on other directions issued by this Court but, when read as a whole, it is but clear that the anxiety of this Court had been to obviate the hardships likely to be suffered by the litigants during the onslaughts of this pandemic. Hence, the legal effect and coverage of the orders passed by this Court in SMWP No. 3 of 2020 cannot be unnecessarily narrowed and rather, having regard to their purpose and object, full effect is required to be given to such orders and directions.
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> 28.1 - Having regard to the purpose for which this Court had exercised the plenary powers under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated

4 2022(5) SCC 112

23.09.2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

28.2 - In other words, the orders passed by this Court on 23.03.2020, 06.05.2020, 10.07.2020, 27.04.2021 and 23.09.2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the defendant.

28.3 - Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time limit for filing the written statement by the appellant in the subject suit did not come to an end on 06.05.2021."

19. In the case of **Prakash Corporates vs Dee Vee Projects Limited** (supra), Their Lordships have observed that the scheme of Limitation Act, 1963, makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged under Section 5, the exclusion of time has been provided in the provisions like sections 5 and 12 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

20. It is thus seen the Supreme Court in **Cognizance for Extension of Limitation** (supra) passed orders providing for some special and extraordinary measures for advancing cause of justice in the wake of challenges by the pandemic. To my mind, since the assessment order was served during the period from 15.03.2020 till 28.02.2022, having regard to the benevolent intent of the orders of the Supreme Court, such period will have to be excluded for the purpose of limitation and as the assessment order was served during this period, the starting point of limitation for the purpose of filing an appeal under section 35 will have to be regarded as 01.03.2022

21. So far as the decision relied by learned Additional Government Advocate in **Sagufa Ahmed & Ors. vs. Upper Assam Plywood Products Pvt. Ltd.** (supra) is concerned, the Supreme Court held that there was no impediment for the appellants to file the appeal on or before 18.03.2020 and in those facts it was held that the decision in **Cognizance for Extension of Limitation** (supra) will not apply.

22. In the case of **M/S Ss Group Pvt. Ltd. vs Aaditiya J Garg** (supra), in the facts of that case, the Supreme Court held that the extended period of limitation was applicable to all petitions/ applications/suits/appeals and all other proceedings and, as such, the delay of four days in filing the written statements in the pending proceedings before the National Commission deserved to be allowed. The written statement/reply was filed by the appellant before the National Commission on 31.08.2020, which was filed beyond the period of 45 days and in that context, Their Lordships held that the period of limitation will have to be extended. The case of **M/S Ss Group Pvt. Ltd. vs Aaditiya J Garg** (supra) is decided in a different factual context and hence distinguishable.

23. As observed earlier, the appeal filed by the petitioner before the respondent no.2 was accompanied with the proof of payment of the amount as required under section 35 of the VAT Act. Hence, the writ petition is allowed. The impugned order is set aside. The matter is remitted to the Tribunal. The application for condonation of delay be considered afresh by the Tribunal in the light of the provisions of sub-section (2) of section 35 of the VAT Act on its own merits and in accordance with law.

24. No order as to costs.

M. S. KARNIK, J

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA Date: 2023.07.30 19:49:41 +05'30'