

15.05.2024
Item No.
ML-67
Court No.5
Saswata

W.P.A. 11142 of 2024

**Rahul Bansal
Versus
The Assistant Commissioner of State Tax,
Bureau of Investigation & Ors.**

Mr. Sumit Ghosh

...For the petitioner

Mr. T.M.Siddiqui
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

...For the State

1. The present writ petition has been filed, inter alia, challenging the orders dated 30th June 2023 and 19th September, 2023 both passed under Sections 107 of the GST Act, 2017 (hereinafter referred to as the “said Act”).
2. It is the petitioner’s case that it carries on business in the name and style of M/s R.S. Steel Company and in usual course of business dealings and transactions had been supplying goods from its registered place of business. When the petitioner was supplying the goods covered under respective invoices, all dated 25th July 2022 and 26th July 2022 through a transporter namely M/s Manish Carriers, from the Kolkata to Assam the goods in question along with the vehicle was intercepted by the respondent no. 1 on 28th July 2022 on the ground of failure on the part of the driver of the conveyance to produce all relevant documents before

the concerned authorities. Following the aforesaid, a physical verification order dated 29th July, 2022 was passed by observing as follows:-

“1. The genuiness of the goods in transit (its quantity etc) and / or tendered documents require further verification.

2. Others: TAX INVOICE IS NOT DULY SIGNED BY THE RTP OR HIS AUTHORIZED SIGNATORY.”

3. The same was followed by an order of detention under Section 129 (1) of the said Act dated 30th July 2022 and a show cause notice under Section 129(3) of the said Act. It may be seen that the petitioner, in terms of Section 129(1) (a) of the said Act had got the said goods released upon payment of penalty and consequent thereupon the release order dated 30th July 2022 was passed. It would also appear from the record that the proceeding under Section 129(3) of the said Act was disposed of by an order dated 30th July 2022, thereby determining penalty to be paid by the petitioner which works out to Rs.3,07,083.2/-x 2 (Rs.6,14,166.4/-).

4. Mr. Ghosh learned advocate appearing for the petitioner submits that although, the petitioner had preferred an appeal from the aforesaid order passed under Section 129(3) of the said Act, and though the provisional acknowledgement for submission of the appeal was issued, however, such appeal was subsequently rejected on 30th June 2023, inter alia, on

the ground that no amount of disputed tax/interest/penalty is mentioned in form GST APL-01.

5. According to him the aforesaid dismissal of the appeal was absolutely irregular, by reasons of a technical glitch the petitioner could not insert the disputed amount in the “*disputed tax*” column which ultimately resulted in the auto generated rejection of the appeal, by issuance of form GST APL- 02 on 30th June, 2023. It is in such circumstances that the petitioner once again filed another appeal on 5th July 2023 by incorporating the disputed amount. Unfortunately, on this occasion, since, the said appeal was filed one month beyond the prescribed period of limitation for filing of appeal, the said appeal was rejected. It is submitted that the petitioner having paid the penalty/interest under Section 129(1)(a) of the said Act, could not have been called upon by the appellate authority to make payment of any pre deposit.
6. Unfortunately, since the petitioner had not inserted the amount of penalty in the “*disputed tax*” column by reasons of technical glitch, the same was rejected by the appellate authority. The appellate authority ought to have taken into consideration the aforesaid and ought to have noted that the first appeal filed by the petitioner on 30th August 2022 was within the time prescribed and as such, ought to have condoned the delay in preferring the subsequent appeal.

7. Mr. Siddiqui, learned advocate appearing for the State submits that the entire problem in connection with the above has arisen by reasons of the petitioner committing a technical error while filing the appeal under Section 107 of the said Act. By drawing attention of this Court to form GST APL-01 he submits that in column no. 14 the disputed amount of tax had not been incorporated. Since, the petitioner failed to incorporate the disputed amount of tax an automated response in GST APL – 02 was issued recording rejection of the appeal on the ground that no amount of disputed tax/interest/penalty has been mentioned in form GST APL – 01.
8. Mr. Siddiqui, in his usual fairness candidly submits that the pre-deposit of penalty is covered by the proviso to Section 107(6) of the said Act. According to him since, the petitioner had paid 200 per cent of the tax/penalty, there was no question of making any further pre deposit.
9. Heard the learned advocates appearing for the respective parties and considered the materials on record.
10. Since admittedly, it appears that the petitioner being aggrieved with the order passed under Section 129(3) of the said Act, had preferred an appeal within the time prescribed and such appeal had been dismissed on technical grounds on 30th June, 2023, the appellate authority ought to have taken the same into

consideration while passing the order dated 19th September, 2023. Although, it appears that the appellate authority by placing reliance on section 107 (4) of the said Act observed that the appellate authority is competent to condone the delay in preferring the appeal, provided the same is filed within one of the time prescribed, I am of the view that the said issue had already been decided by the Hon'ble Division Bench of this Court in the case of ***S.K.Chakraborty and sons v. Union of India & Ors.***, reported in **(2023) SCOnline Cal 4757**. In the aforesaid judgment this Hon'ble Division Bench while interpreting the provisions of the said Act having regard to Section 29(2) of the Limitation Act, 1963 has held that since there is no expressed or implied exclusion of Section 5 of the Limitation Act, 1963, by virtue of Section 29(2) of the Limitation Act, 1963, Section 5 of the Limitation Act, 1963 stands attracted.

11. The present case is, however, still more peculiar. In this case although, the petitioner's appeal was filed within time, by reasons of technical glitches the same was rejected. When the petitioner preferred the second appeal, as there is no option to seek review of the first appeal, the second appeal was rejected on the ground that there is no provision under Section 107 of the said Act to entertain the second appeal.
12. Be that as it may, I am of the view that considering the peculiar facts of the case, the petitioner's statutory right to challenge the order passed under Section 129

(3) of the said Act cannot be defeated by reason of technical glitches.

13. Having regard thereto, I restore the appeal filed by the petitioner by setting aside the orders of rejection dated 30th June, 2023 and 19th September, 2023. The appellate authority is directed to hear out both the appeals by treating the same to be a composite appeal on merit, without insisting for any pre deposit from the petitioner. The appellate authority shall dispose of the aforesaid appeal upon giving opportunity of personal hearing to the petitioner.
14. It is expected that the said appeal shall be disposed of within a period of 6 weeks from the date of communication of this order.
15. With the above observations and directions, the writ petition being WPA 11142 of 2024 is disposed of without any order as to costs.
16. All parties shall act on the basis of the server copy of the order duly downloaded from this Court's website.

(Raja Basu Chowdhury, J.)