23
bs 02.12.2024

WPA 27171 of 2024

Snehasish Paul
Vs.
Assistant Commissioner of State Tax, Balurghat Charge & Ors.

Mr. Sandip Choraria
Mr. Rishav Manna
… … for the petitioner

Mr. A Ray.
Mr. T.M.Siddiqui
Mr. T. Chakraborty
Mr. S. Sanyal
Mr. D. Sahu
… …for the respondents

1. The petitioner has filed this writ petition challenging the order of the Appellate Authority (respondent no. 3) under the GST Act, 2017, which confirmed an earlier adjudication imposing a penalty for availing excess Input Tax Credit (ITC). The petitioner is duly registered under the GST Act of 2017 with GST Identification No. 19AKVPP0947Q1ZY. The issue arises from a notice issued on May 20, 2022 for the financial year 2019-2020, alleging two discrepancies: availing ITC of ₹3,84,902.71 under CGST and SGST from dealers with cancelled GST registrations, and a mismatch in returns suggesting an undisclosed turnover of ₹4,84,58,300, leading to a tax liability of ₹29,07,498 each under CGST and SGST.

2. The petitioner missed the notice as it was uploaded to an obscure tab on the GST portal. A Show Cause Notice was later issued on August 23, 2022, demanding ₹1,03,78,641.04, including tax, interest, and penalty. However, due to the petitioner's severe health issues, including anaemia and spinal complications and the resignation of their accountant, no reply was submitted. Consequently, on April 12, 2023, the authorities passed an ex-parte order without granting a mandatory personal hearing under Section 75(4) of the GST Act.

3. Upon learning of the order in March 2024, the petitioner filed an appeal on March 29, 2024, explaining the delay with medical evidence. Despite this, the appeal was rejected on June 10, 2024 as time-barred under Section 107 of the GST Act. The petitioner contends that the delay should be condoned under Section 5 of the Limitation Act, 1963, citing judicial precedents. The petitioner also argues that the ex-parte order violates principles of natural justice due to the lack of a personal hearing. They seek intervention under Article 226 of the Constitution, requesting the quashing of the impugned orders and an opportunity to present their case on merit.

4. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition as statutory provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, particularly in light of judicial precedents supporting such relief.

5. In **S. K. Chakraborty & Sons Vs. Union of India** reported in ***[2024] 159 taxman.com 259 (Calcutta)***, the Hon'ble Division Bench comprising Justice Debangsu Basak and Justice Md. Shabbar Rashidi held that: -

"19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/notice. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the Section 5 of the Act 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 it its entirely has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given *facts and circumstances of a case, the period for filling the appeal can be extended by the Appellate Authority".*

6. In light of the procedural irregularities and the arbitrary nature of the actions, this court finds the petitioner's case to be meritorious. Accordingly, the writ petition is allowed, and the appellate order dated June 10, 2024 is quashed. The petitioner's rights under the GST Act, 2017 are restored, with all benefits that accompany this decision, without any adverse consequences arising from the annulled order. The Appellate Authority is requested to consider and decide the application for condonation of delay filled by the petitioner on merits. If, the explanations advance for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal, hear and dispose the appeal on merit.

7. All pending applications are accordingly disposed of.

8. There shall be no order as to costs.

9. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)