OD-9

WPO/943/2024
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/S. ARJUN ENTERPRISE
VS
UNION OF INDIA AND OTHERS

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 20th December, 2024

Appearance :
Mr. Aditya Dutta, Adv.
Mr. Akash Dutta, Adv.
For petitioner
Mr. Uday Shankar Bhattacharya, Adv.
Mr. Tapan Bhanja, Adv.
For CGST
Mr. Samarajit Roychoudhury, Adv.
For the U.O.I

1. The Court: The Petitioners in the present writ petition have approached this Hon'ble Court under Article 226 of the Constitution of India, 1950, challenging the arbitrary and unreasonable dismissal of the appeal and seeks appropriate reliefs from this Hon'ble Court.

2. The petitioner, a proprietorship entity, is engaged in the manufacturing and trading of materials such as scrap copper cables and paper waste, procured through E-auction from Indian Railways. The petitioner is duly registered under GST Registration No. 19AKRPS9773P1Z and has consistently complied with statutory obligations by filing monthly GST returns and discharging GST liabilities within due dates since the inception of the GST regime.

3. On 27.05.2022, the petitioner received a notice intimating discrepancies in GST returns for the financial years 2017-18 and 2018-19. Subsequently, a show cause cum demand notice under Form GST DRC-01 (DIN-20221161WA0000000B07) was issued on 30.11.2022 by Respondent No. 3. The notice sought recovery of ₹56,226 as short-paid tax for FY 2017-18, along with interest and penalty. It further demanded the recovery of excess Input Tax Credit (ITC) amounting to ₹62,19,882, availed and utilized during FY 2017-18 and 2018-19, along with interest and penalty.

4. The petitioner submitted a reply to the show cause notice, however, Respondent No. 3 confirmed the entire demand through the order-in-original dated 13.04.2023. The said order was dispatched to the petitioner in physical form but was not uploaded on the GST portal. Consequently, the petitioner was unable to file an appeal online, a procedural prerequisite under the GST regime. The petitioner repeatedly approached the department to ascertain when the order would be uploaded, as the online submission and subsequent physical filing with a provisional acknowledgment slip are mandatory for filing an appeal.

5. Despite these procedural hurdles, the respondent authorities issued a letter of recovery of arrears dated 16.09.2023 without uploading the order on the GST portal. The petitioner, upon receiving the recovery letter, made further attempts to resolve the issue but was unable to upload the appeal. Left with no alternative, the petitioner filed a physical appeal on 05.10.2023, accompanied by the requisite pre-deposit.

6. It is pertinent to note that the department uploaded the order in Form GST DRC-07 dated 13.04.2023 only on 27.12.2023, nearly three months after the petitioner had filed the physical appeal. Despite the delay caused by the respondent authorities, Respondent No. 2 dismissed the appeal on 30.08.2024 solely on the ground that it was time-barred, without considering the procedural lapses or assigning any reasons.

7. 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.

8. 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".*

9. 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 30.08.2024 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 orders. 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.

10. All pending applications are accordingly disposed of.

11. There shall be no order as to costs.

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

(RAJARSHI BHARADWAJ, J.)