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Date: 2024.02.27
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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1632 OF 2024

Shri Yogesh Rajendra Mehra

Age -45

A-1/2-04, R.N.A.Park, Vashinaka,
Chembur, Mumbai – 400 074.

... Petitioner

*Versus*1. Principal Commissioner CGST &
Central Excise Raigad (appeal)
5th Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400 614.2. The Adjudicating Authority, through
The Assistant Commissioner, CGST &
Central Excise, D-1, having Off. At 16th Flr
Palm Beach Road, Sector – 19, D, Vashi,
Navi Mumbai – 400 705.3. The appellate authority, through
Addl. Commissioner, Central Tax,
(GST & Central Excise) Raigad appeal,
Having office at 5th Floor, CGO Complex,
CBD Belapur, Navi Mumbai 400 614.

... Respondents

Mr.C.S.Lamba for the Petitioner

Mr.Jitendra B. Mishra a/w Ms.Sangeeta Yadav and Mr.Rupesh Dubey for
the Respondents

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 20th February, 2024

ORAL JUDGMENT: (PER G. S. KULKARNI, J.)

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of the parties.
3. This Petition under Article 226 of the Constitution of India is filed assailing an order dated 28th December 2022, being an Order in Appeal passed by the Commissioner of Central Tax, Central Excise & Service Tax, Raigad (Appeals), whereby the Petitioner's appeal against the Order dated 8th June 2022 passed by the Assistant Commissioner, CGST and Central Excise, Division-I, Navi Mumbai, Commissionerate under section 54 of the Central Goods & Services Tax Act, 2017 ("CGST Act") has been rejected.
4. The Petitioner has contended that inadvertently, the Petitioner had filed his Goods and Service Tax returns under his old GST registration number as well as under new GST registration number, as also deposited tax with both the returns. It is the petitioner's case that the Petitioner, therefore, had become entitled to refund of the amount of tax deposited by him on the cancelled (old) registration. The petitioner filed a refund application which was rejected. The rejection was confirmed in the further proceedings. In these circumstances, the Petitioner is before the Court praying for the following reliefs:

"a. This Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction calling for the records and proceeding of the entire proceedings before Assistant Commissioner CGST & CENTRAL EXCISE Raigad (appeals) from the Respondent Nos. 1 to 3, and/or;

b. This Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction calling for the records and proceeding of the entire proceedings before Additional Commissioner CGST & CENTRAL EXCISE Raigad (appeals) from the Respondent Nos. 1 & 3, and/or;

c. The Hon'ble Court be pleased to issue a Writ in the nature of Mandamus or any other Writ, Order or Directions to set aside impugned Order dated 27th February 2023 passed by the Respondent No. 3 and/or;

d. The Hon'ble Court be pleased to restore the appeal No. -JSC/ADC/GST/325/RGD APP/2022-23 to the file of the Respondent No. 3 and thereby direct the Respondent No. 3 to pass appropriate Orders on merits for refund of Rs. 1,22,000/- (Rupees One Lacs

Twenty Two Thousand Only) which was mistakenly transferred to old GST No. 27AQEPM6029P1ZA from the Account of the Petitioner and/or;

e. This Hon'ble Court be pleased to pass Orders Directing the Respondents Nos. to 1 3 their officers/agents/Thousand Only) to the Petitioner Account which was mistakenly transferred to old GST No. 27AQEPM6029P1ZA from the Bank Account of the Petitioner, and/or;

f. The Hon'ble Court be pleased to pass any other such Order's that this Hon'ble Court deem fit and proper.

g. The Hon'ble Court be pleased to allow the Petitioner to Amend, modify the Writ Petition."

5. Briefly, the facts are : The Petitioner contends that he is a script writer who takes up assignment on contract basis. He had applied for registration under the CGST Act, 2017. Registration Certificate bearing Registration Number : 27AQEPM6029PIZA was granted to him on 19th July 2018. The Petitioner had filed his return under the CGST Act on 2nd December 2018 and thereafter, no returns were filed. By an order dated 1st January 2019, the said registration of the Petitioner was cancelled and hence, was rendered inconsequential.

6. The case of the Petitioner is that, thereafter, the Petitioner had started his professional activities and made an application for a fresh registration which came to be granted to the Petitioner on 26th March 2022 with a new registration number : 27AQEPM6029P2Z9. It is contended that, for the first quarter of year 2022, two returns came to be filed by his Chartered Accountant who inadvertently, deposited a tax of Rs.1,22,220/- in the cancelled registration number (Old GST Account) being 27AQEPM6029PIZA, as also under the new registration number being 27AQEPM6029P2Z9, when in fact, the returns were required to be filed and tax was to be deposited only under the new registration account, which was in vogue and not the cancelled registration.

7. In the aforesaid circumstances, the Petitioner approached the department with an application claiming refund of Rs.1,22,220/-, being tax deposited by mistake in the returns under the cancelled registration number.

8. On such refund application, the Petitioner was issued a show cause notice which the Petitioner responded *inter alia* stating that the Petitioner was bonafide seeking a refund, as there was a mistake which had occurred in filing of the returns under the cancelled registration number and depositing tax of the said amount. The Assistant Commissioner, CGST & C.Ex., by his order dated 8th June 2022, however, rejected the refund application on the following reasons :

"I have carefully gone through the facts of the case. "As per the details available, the taxpayer has filed GSTR-1Q and GSTR-3B upto December 2018 and no return has been filed after that. As per Para (6) of Circular No.125/44/2019 dated 18.11.2019, any refund claim for a tax period may be filed only after furnishing all the returns in form GSTR-1 and form GSTR-3B, which were due to be furnished on or before the date on which the Refund application is being filed".

9. Being aggrieved by the order passed by the Assistant Commissioner, the Petitioner approached the appellate authority, namely "*Commissioner of Central Tax, Central Excise & Service Tax, Raigad (Appeals)*", under the provisions of Section of 107 of the CGST Act. By the impugned order (Order in appeal) dated 28th December 2022, the Petitioner's appeal was rejected on the ground of limitation stating that, although the Order was passed by the Assistant Commissioner on 8th June 2022, according to the appellate authority, the appeal was filed on 28th December 2022, which was barred by the provisions of Section 107(4) of the CGST Act.

10. On the above backdrop, we have heard the learned counsel for the parties.

11. On behalf of the Petitioner, it is submitted that this is clearly a case of an inadvertent / bona fide error on the part of the Petitioner's Chartered Accountant in filing the returns and depositing tax under a cancelled registration number and for the second time filing the same return under new registration number. He therefore submitted that the Petitioner was entitled to seek refund of the tax which was erroneously deposited with the returns filed under the first (cancelled) registration number. He submits that returns as filed under the old registration were *void ab initio* and consequently, the amount deposited thereunder was of no legal consequence, so as to amount to be any tax either validly paid or collected. It is submitted that these facts were not taken into consideration by the authorities below, in passing the impugned orders. It is hence submitted that the said orders are contrary to law. Insofar as the impugned order passed by the appellate authority is concerned, the submission is that although the order records that the Appellant had filed the appeal Online on 8th August 2022, the appellate authority has not set out any reasons as to why such online filing of the appeal was not taken into consideration in deciding the issue of limitation. He submits that, although there was an error in submitting copies of some of the documents, that cannot make the filing of the appeal to be invalid and/or not within the limitation when according to him, the same was filed within the prescribed limitation as prescribed by Sections 107(1) and (4) of the CGST Act.

12. On the other hand, Mr.Mishra, the learned counsel for the Respondents, would support the impugned orders. He however submits that the portal indicates that there is no dispute in presenting the appeal online. He would also submit that the first registration under which the tax was deposited was cancelled and, thereafter, the Petitioner applied for a fresh registration, which was granted to the Petitioner on 26th March 2022.

13. Having heard the learned counsel for the parties and perused the documents on record, in our opinion we find that the approach of both the Authorities in dealing with the Petitioner's refund application is not correct in facts as also in law. This appears to be clearly a case wherein, admittedly, the Petitioner's first registration stood cancelled by an order dated 1st January 2019. It is not in dispute that the Petitioner, was granted a fresh registration on 26th March 2022 which was his valid registration under the CGST Act, under which the Petitioner was expected to file his returns. However, it appears that there was an inadvertent / bona fide mistake, on the part of the petitioner's Chartered Accountant in filing the Petitioner's return for the first quarter of the year 2022 on both the registrations instead of filing such returns under the new / second registration. Not only this, the returns were identical, also, the tax deposited was of the similar amount of Rs.1,22,220/-.

14. Considering these facts, it was required to be considered by the authorities below that an assessee cannot be expected to file his return and deposit any tax under an invalid cancelled registration number. Further, a legitimate and proper return was filed by the Petitioner under the second (new) registration which was a valid registration. Thus, insofar as the tax deposited under the first (cancelled) registration is concerned, the said registration itself being non-existent, the tax return filed thereunder and any tax deposited under such return, could not have been retained by the respondents as it was not a deposit as per law, it also cannot be a deposit received or any collection of tax under authority of law. Insofar as the second registration return is concerned, the same was appropriately filed and similar amount of Rs.1,22,220/- was deposited.

15. In these circumstances, it was not correct for the original authority to furnish the reasons, as noted by us above, so as to deny the refund claim of the Petitioner. Further, the appellate authority on a purely technical reason that

the Petitioner's appeal was barred by limitation under Sections 107 (1) and (4) rejected the Petitioner's appeal. It is not in dispute that the Petitioner had filed his appeal online on 18th August 2022, which was within the prescribed limitation i.e. within a period of four months from the impugned order dated 8th June 2022. Although, in paragraph 4.5 of its order, the appellate authority has recorded the said fact, however, merely on the ground that physical copies were not furnished and/ or on some deficiencies on documents to be uploaded being not complied by the Petitioner, the appellate authority taking a hyper-technical view of the matter, rejected the Petitioner's appeal, without examining such essential facts and without touching the merits of the Petitioner's case. Such approach of the appellate authority, in our opinion, was not only contrary to the record and illegal, but also not consistent with the provisions of Sections 107(1) and (4) of the CGST Act.

16. We may observe that, in such circumstances, any deficiency in filing the appeal / application like failure to file physical documents, cannot make the appeal, which was registered on the online portal within the prescribed period of limitation, to be labelled and/or held to be barred by limitation. Once the appeal was filed (albeit under the Online method) within the prescribed limitation, any deficiency in the appeal certainly could be removed later on, as the law does not provide, that the proceeding be strictly filed sans deficiency, and only then, the proceedings would be held to be validly filed. If such proposition is to be recognized as the correct position, it would not only tantamount to a patent absurdity, but also would result in a gross injustice, prejudicially affecting the legitimate rights of persons to a legal remedy (access to justice). Thus, the parties would necessarily have an opportunity to remove the deficiencies, if any, which may prevail at the time of filing of the proceedings, after the proceedings are filed. It may be observed that procedural compliances can never defeat the substantive remedy/right to pursue any

proceedings when filed within limitation. Thus, any procedural deficiency in the proceeding filed within the prescribed limitation cannot be labelled to be a proceeding filed beyond limitation.

17. Thus, in the facts of the present case, both the authorities ought to have considered the aforesaid legal and factual position. For the above reasons, we are accordingly inclined to allow this Petition by the following order:

ORDER

- a. Impugned order dated 8th June 2022, as confirmed by the order dated 27th February 2023 passed by the Assistant Commissioner, CGST and Central Excise, Division-I, Navi Mumbai, Commissionerate are quashed and set aside.
- b. The Petitioner is entitled to refund of the amounts which was deposited by him under the erroneous return filed under the cancelled registration No.27AQEPM6029PIZA being an amount of Rs.1,22,220/-.
- c. Let the said amount, along with the permissible interest, be refunded to the Petitioner within four weeks of the Order being presented before the Assistant Commissioner, CGST and Central Excise, Division-I, Navi Mumbai, Commissionerate.
- d. Rule is made absolute in the above terms.
- e. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)