



2024:DHC:3392-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 26.04.2024

W.P.(C) 4401/2024

**PRAMOD KUMAR TOMAR (PROP.M/S PARAMOUNT
STEEL** Petitioner

versus

**ASSISTANT COMMISSIONER MUNDKA DIVISION DELHI
WEST, CENTRAL GOODS AND SERVICES TAX &
ANR** Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Nitin Gulati, Advocate

For the Respondent: Mr. Aakarsh Srivastava, Standing Counsel (through VC)
with Mr. Vaibhav Gupta, Advocate.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 18.10.2023, whereby the appeal filed by the petitioner impugning the Order-in-Original dated 12.08.2022 rejecting the refund claim of the petitioner, has been dismissed solely on the ground of limitation.



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2. The Appellate Authority has held that there was a delay in filing the appeal for the reason that Order-in-Original that was subject matter of the appeal before the Appellate Authority was not uploaded with the appeal at the time of online filing and copy of the same was physically filed after a gap of nearly ten months and as such the appeal was barred by time.

3. Petitioner impugned the Order-in-Original dated 12.08.2022 by filing the appeal through the on-line mode. The appeal was filed on 12.11.2022. At the time of physical hearing of the appeal on 29.08.2023, petitioner was called upon to file a physical copy of the Order-in-Original which was filed. Since the physical copy was filed on 29.08.2023, the Appellate Authority has held that the appeal was barred by time.

4. Impugned order records that in terms of Rule 108 (3) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the Rules), the date of issuance of provisional acknowledgement is to be considered as the date of filing of the appeal, if the decision or order appealed is uploaded on the common portal.

5. Appellate Authority has held that Petitioner/Appellant had not uploaded the order appealed against at the time of online filing and as such the date when the same was physically filed on 29.08.2023



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would be deemed to be the date of filing of the appeal. Thus, finding has been returned that the appeal is barred by time.

6. Learned counsel for the Petitioner contended that the Order-in-Original was uploaded on the common portal along with the appeal on 12.11.2022 and as such in terms of Rule 108 (3) of the Rules, the date of filing of the appeal shall be deemed to be 12.11.2022 and not 29.08.2023 as held by the Appellate Authority.

7. Initially, this submission was disputed by the learned counsel for the respondents and accordingly learned counsel for the petitioner on 24.04.2024 demonstrated before this Court by accessing the on line portal and showed that the Order-in-Original had been uploaded along with the appeal.

8. Learned counsel for respondents today submits that the stand that the Order-in-Original was not uploaded alongwith the appeal was taken because of a technical glitch. He submits that the on line portal accessible to the department did not reflect the Order-in-Original as part of the appeal.

9. He submits that same has been re-verified and it has been confirmed that Order-in-Original had been uploaded along with the appeal. He however submits that the appeal having been filed on 12.11.2022 is delayed by one day.



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10. Reference may be had to Section 107 of the Central Goods & Service Act, 2017 (hereinafter referred to as the “Act”). Said Section reads as under:-

“107 Appeals to Appellate Authority

1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

*2) *****”*

11. In terms of Section 107 (1) of the act, any person aggrieved by an order passed by an Adjudicating Authority may appeal to the Appellate Authority within three months from the date on which said decision or order is communicated to such person.

12. Subject Order-in-Original was signed on 12.08.2022 by the Adjudicating Authority. Learned counsel for petitioner is unable to confirm as to the date when the order was uploaded/communicated. Even if it is assumed that the order was communicated/uploaded on 12.08.2022 the date on which it is signed, the appeal was to be filed within a period of three months from the date of the said order.



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13. In the impugned order, the Appellate Authority has held that the appeal was liable to be filed before 11.11.2022. Said finding is erroneous as the Appellate Authority has not noticed the provisions of Section 12 of the Limitation Act, 1963, which read as under:-

“12. Exclusion of time in legal proceedings.—(1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

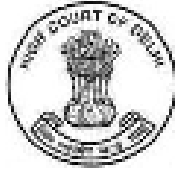
(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded.”

14. In terms of Section 12 (1) of the Limitation Act, in computing the period of limitation for an appeal, the day from which such period is to be reckoned, is to be excluded. Further, in terms of Section



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12(2) of the Limitation Act, in computing the period of limitation, the day on which the judgment complained of was pronounced, is also to be excluded.

15. Accordingly, even if it is assumed that the order was uploaded/communicated on the day it was signed i.e. 12.08.2022, said date of 12.08.2022 is to be excluded while computing the period of limitation. Accordingly, the period of three months is to commence from 13.08.2022. Thus petitioner was liable to file the appeal by 12.11.2022. It is an admitted position that the appeal was filed alongwith a copy of the order, through the on-line mode on 12.11.2022, i.e. within the period of three months.

16. Consequently, it is held that the appeal was within time and the impugned order erroneously rejects the appeal on the ground of limitation. Consequently, the impugned order dated 18.10.2023 is set aside. The appeal is restored on the records of the Appellate Authority. The Appellate Authority is now directed to decide the appeal on merits in accordance with law.

17. Learned counsel for the petitioner submits that the refund claim of the petitioner was in the sum of Rs. 6,45,000/- and on merits also, the claim against the petitioner is only of Rs. 74,400/- as is evident from the Show Cause Notice dated 25.07.2022.



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18. This is disputed by learned counsel for the respondents who submits that the entire claim of the petitioner was inadmissible and thus liable to be rejected on merits.

19. Since, the appeal was rejected solely on the ground of limitation and not on merits we are not examining the said contention of the Petitioner and permit the Petitioner to raise the said issue before the Appellate Authority at the time of hearing of his appeal on merits.

20. Petition is disposed of in the above terms. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

RAVINDER DUDEJA, J

APRIL 26, 2024/*sk*