

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 12076/2024

M/s Molana Construction Company, Address Kadar Khan Ki Dhani, 85-2, Pol Ji Dairy, Bhoo, Jaisalmer. Through Its Proprietor Janu Khan S/o Kadan Khan, Aged About 43 Years, R/o Pol Ji Ki Dairy, Bhoo, District Jaisalmer.

-----Petitioner

Versus

1. Central Goods And Service Tax Department, Through The Commissioner New Central Revenue Building Statute Circle, Jaipur (Raj.).
2. Appellate Authority, Central Excise And Central Goods And Service Tax, Jodhpur (Raj.).
3. Assistant Commissioner, Rajasthan Goods And Service Tax Department, Circle Jaisalmer, Jaisalmer (Raj.).

-----Respondents

For Petitioner(s)	:	Mr. Raghu Raj Sharma
For Respondent(s)	:	Mr. Kuldeep Vaishnav

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

26/07/2024

This writ petition seeks to challenge the order dated 13th June 2024 passed by the Joint Commissioner of the Central Goods and Service Tax and Central Excise at Jodhpur whereby the order in appeal No.430 (RSG) CGST/JDR/2024 was dismissed as barred by limitation.

2. The Joint Commissioner of the CGST referred to the provisions under Section 107 and the circular No.148/04/2021-GST dated 18th May 2021 and formed an opinion that beyond the period of three months with the extended period of further one

month if the appeal under Section 107 of the CGST Act, 2017 is not filed, the same cannot be entertained by the appellate authority. The Joint Commissioner of the CGST also referred to a decision in "*Plenuel Nexus Private Ltd. Vs. Additional Commissioner Headquarter*" wherein the Kerala High Court rendered the following opinion.

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay WP(C) NO. 15574 OF 2023 5 beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period".

Relying on the above interpretation, it was held as under:-

"10. The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special

statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted."

3. The Joint Commissioner of the CGST further held that since the appeal is not filed within the prescribed limit, an adjudication on merits cannot be rendered.

4. The Joint Commissioner of the CGST held as under:

"12. Now, I take up the second issued regarding merit of the case, I find that the appellant has not filed the appeal in prescribed time limit as per Section 107(1) and 107(4) of the CGST Act, 2017, therefore, the instance case cannot be decided on merits. In view of the above discussion, I find that the appellant filed the present appeal beyond the time limit prescribe under Section 107 of the CGST Act, 2017. Accordingly, I dismiss the appeal filed by the appellant being time barred in terms of Section 107 of the CGST Act, 2017, without going on merit.

13. In view of the above it is clear that the appellate authority has no power to allow an appeal which is filed beyond the prescribed limit. Accordingly, I hold that, since the appeal is filed after expiry of the prescribed period of three months and a further period of one month which may be condoned by the Appellate Authority, the appeal deserves to be rejected on the grounds of limitation without going into the merits of the case. Therefore, I reject the appeal without going into the merits of the case."

5. The CGST Act has been enacted to levy taxes on manufacture of certain goods in the form of Central Excise Duty and to consolidate certain provisions of service tax and inter-state sale of goods in the form of Central Sales Tax as also to levy tax by the State Governments on retail sales in the form of Value-added Tax, entry of goods in the form of Entry Tax, Luxury Tax etc. The provisions under the CGST Act besides seeking levy and calculation of taxes are also intended to facilitate commercial and business activities. The legislative intentment in this regard is manifest in the provisions under Section 30 of the CGST Act. In the backdrop of such legislative intentment, the provisions under

Section 107 of the CGST Act cannot be frustrated on mere technicalities. A right to appeal as provided under the statute must be decided on merits irrespective of some laches or delay on the part of the Assessee. This is by now too well-settled that the statutory provisions of limitation under Section 107 of the CGST Act would bind the statutory authority which cannot condone the delay except the circumstances envisaged thereunder but such limitations are not applied in a writ proceeding.

6. The powers under Article 226 of the Constitution of India are founded on justice, equity and good conscience and are exercised for public good. Mr. Kuldeep Vaishnav, the learned counsel for the Revenue has referred to a decision of this Court in D.B. Civil Writ No.2430/2024 "*Ashok Varandan Vs. Central Board of Indirect Taxes and Customs & Ors.*" (dated 1st March 2024) to submit that in view of the express bar of limitation under Section 107 of the CGST Act the present writ petition is not maintainable. In this context, we may indicate that the issue in "*Ashok Varandani*" pertained to filing of statutory return in form GSTR/3B and connected issues. This Court referred to the decision in "*Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. Glaxo Smith Kline Consumer Health Care Limited*" reported in (2020) 19 SCC 681, wherein the Hon'ble Supreme Court observed that if the Assessee did not avail the alternative remedy of statutory appeal even within the extended period of limitation by seeking condonation of delay then a writ petition shall not be entertained. Quite apparently, the language employed in "*Glaxo Smith Kline Consumer Health Care Limited (supra)*" reflects that the Court has ample powers to condone the delay in preferring the appeal.



7. For the foregoing reasons, we are inclined to entertain the present writ petition and the order dated 13th June 2024 passed by the Joint Commissioner of CGST is quashed. Consequently, the statutory appeal vide Order-in-Appeal 430 (RSG) CGST/JDR/2024 is restored to its original file subject to the petitioner firm depositing late fee, penalty and other statutory deposits for entertaining the appeal.

8. D.B. Civil Writ Petition No.12076/2024 is allowed in the aforesaid terms.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J

37-Arjun/-