

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2025:AHC-LKO:4295-DB

Court No. - 2

Case :- WRIT TAX No. - 381 of 2024

Petitioner :- M/S Buddha Resorts Private Limited Thru. Director Shri. Anil Tekriwal Lko.

Respondent :- Chief Commissioner Of Goods And Services Tax (Gst) Lko. Zone And Another

Counsel for Petitioner :- Onkar Pandey, Arjun Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State.
2. By means of this writ petition the petitioner has challenged revisional order passed by the Revisional Authority under Section 108 of U.P. Goods and Services Tax Act, 2017.
3. The contention of the petitioner's counsel is that the revision of the petitioner has been dismissed firstly on merits and then as not maintainable. The submission is that the revision was maintainable in view of the language used in Section 108 of the Act, 2017. He has taken us through Sub-section 2 of Section 108, especially, clause 1 thereof which says that Revisional Authority shall not exercise any power under sub-section (1), if—(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or (b) the period specified under sub-section (2) of section 107 has not yet expired

or more than three years have expired after the passing of the decision or order sought to be revised; or (c) the order has already been taken for revision under this section at an earlier stage; or (d) the order has been passed in exercise of the powers under sub-section (1).

4. The submission is that though remedy of appeal was available to the petitioner against an order passed under Section 73 of the Act, 2017 but a revision was also maintainable under Section 108 and the petitioner chose to file a revision. If the order impugned is taken as an order on merits, then, it is a cryptic order which has been passed without due and proper application of mind to the facts and grounds raised in the revision. The cryptic observation that the order impugned in revision was not erroneous does it not satisfy the requisites of Sub-section 108 and is no order in the eyes of law as it does not discuss the facts nor the claim of the petitioner at all within the scope of revision under Section 108. He submitted that if it is treated as an order dismissing the revision as not maintainable, then, the same is clearly against the provisions contained in Section 108 of the Act, 2017.

5. On being confronted Shri Rajesh Tiwari, learned Additional Chief Standing Counsel for the State submitted that in fact the revision was not maintainable. He submitted that as per his understanding the order impugned is one which dismisses the revision as not maintainable.

6. Having heard learned counsel for the parties and having perused the records, we are of the opinion that if the revision of the petitioner has been dismissed as not maintainable, then, there was no occasion for the Revisional Authority to have observed as under:-

"प्रश्नगत प्रकरण में विचारोंपरान्त पारित आदेश के प्रथम दृष्ट्या त्रुटिपूर्ण, राजस्व हितों के प्रतिकूल अथवा अवैध न होने के कारण रिवीजन हेतु दाखिल प्रार्थना-पत्र ग्राह्य नहीं है।

यह भी उल्लेखनीय है कि UPGST/CGST अधिनियम की धारा 107 के अधीन ऐसे प्रकरणों में अपील योजित किये जाने का प्रावधान है जो *first remedy* के रूप में आप द्वारा प्राप्त की जा सकती है।

इस प्रकार आप द्वारा प्रस्तुत पुनरीक्षण प्रत्यावेदन जी०एस०टी० एक्ट एवं नियमावली के अन्तर्गत विधिनुकूल नहीं होने के कारण पोषणीय नहीं है।"

7. If the revision was not maintainable on the ground that there was a provision of appeal, then, the Revisional Authority should not have discussed any other aspect of the matter, however, if he entered into merits of the matter in the sense as to whether the parameters and prerequisites for exercise of revisional powers under Section 108 were existing or not, then, he could not have observed that the writ petition is not maintainable. The order is not clear.

8. Be that as it may, we have perused Section 108 of the Act, 2017 which reads as under:-

"108. Powers of Revisional Authority.— (1) *Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the Commissioner of State tax, or the Commissioner of Union territory tax, call for and examine the record of any proceedings, and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person*

concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if—

(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court

against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term,—

(i) —record shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;

(ii) —decision shall include intimation given by any officer lower in rank than the Revisional Authority."

9. Sub-section 2 of Section 108 of the Act, 2017 says that - "The Revisional Authority shall not exercise any power under sub-section (1), if—(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118." The words - "**the order has been subject to an appeal under Section 107**" means that against such an order an appeal has been filed. Noway these words can be understood as implying that first of all the applicant, who has filed the revision under Section 108, should file an appeal and only thereafter, a revision will lie against such an order passed in appeal.

10. In view of the above discussion, we are of the opinion that the impugned order in either eventuality is not maintainable. If it is taken as

a decision on merits it does not consider the facts of the case and the pleas raised in the revision. If it is taken as an order dismissing the revision as not maintainable, then, it is against the provisions of Section 108, as discussed hereinabove. The impugned order is quashed.

11. The writ petition is accordingly **allowed**.

12. The revision shall stand restored to its original number before the Revisional Authority for a consideration afresh in accordance with law keeping in mind our observation hereinabove.

(Manish Kumar,J.) (Rajan Roy,J.)

Order Date :- 22.01.2025

R.K.P.