



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

103

CWP-26945-2025

Date of Decision : 13.02.2026

M/S FRIENDS TRAVELS

.... PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

.... RESPONDENTS

CORAM : HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present : Capt. Arun Sharma, Advocate and
Mr. Gurjeet Singh, Advocate
for the petitioner.

Mr. Ajay Kalra, Advocate
for the respondent (through VC).

LISA GILL, J. (Oral)

1. Prayer in this writ petition is for setting aside order dated 22.12.2023 whereby appeal filed by the petitioner was dismissed by Commissioner (Appeals) CGST, Commissionerate as pre-deposit in terms of Section 35F of the Central Excise Act, 1944, for short (the Act) was not made by the petitioner.

2. Brief facts as pleaded in the writ petition are that petitioner-firm is engaged in the business of providing travel services including cab rentals etc. It is claimed that Order-in-Original dated 13.09.2022 was illegally and



incorrectly passed *ex parte* by Astt. Comm. CGST, raising demand of service tax of Rs.12,62,053/- with penalty. It is incorrectly recorded therein that noticee failed to respond to any of the communications show cause notice etc. for the reason that notices, if any, were served upon an outgoing partner who had failed to communicate said notices to the firm. Thus, managing partners were unaware of the notice(s) in question. Moreover, the levy in question is absolutely illegal and not warranted in any manner. It is submitted that when petitioner came to know of passing of Order-in-Original i.e. 16.12.2022, appeal dated 10.03.2023 was filed.

3. Intimation dated 14.06.2023 was received by petitioner regarding deficiency in the appeal to the extent that there is no proof of pre-deposit and appeal is time barred, with no application for condonation of delay having been filed. Copy of power of attorney was also not found with the appeal submitted. Petitioner thereafter sought clarifications from respondent No.3 vide communication dated 19.06.2023, seeking intervention and advice on the pre deposit and duty payable on the amount to be calculated. Petitioner further stated there was in fact no delay in filing appeal but if it was found by appellate authority that appeal was filed beyond the period of limitation, petitioner would file an application. Power of attorney was submitted. However, clarification as sought was never received and order in appeal dated 22.12.2023 was incorrectly passed by the first appellate authority. Present writ petition has been filed in September 2025, challenging order dated 22.12.2023.



4. Learned counsel for petitioner argues that necessary clarification in respect to the amount of pre deposit should have been first communicated to petitioner before passing impugned order dated 22.12.2023. In case, such a clarification had been given, petitioner would have immediately deposited the amount and matter should have been heard on merits. It is, thus prayed that impugned order dated 22.12.2023 may be set aside and writ petition be allowed as prayed for.

5. Learned counsel for respondent (on advance notice) has opposed the writ petition, dismissal thereof is sought.

6. We have heard learned counsel for parties and have perused the file carefully with their able assistance.

7. Perusal of Order-in-Original dated 13.09.2022 reveals that show cause notice dated 29.12.2020 was duly issued to the petitioner demanding an amount of Rs. 12,62,053/- in terms of Section 73 of the Act. No reply was admittedly filed by the petitioner. It is further recorded in order dated 13.09.2022 that the matter was listed for personal hearing on 28.09.2021, 18.11.2021, 31.05.2022 and 08.09.2022 but the noticee did not appear on any of the dates fixed for personal hearing. *Exparte* order was, thus, passed as under :

“(i) I confirm the demand of Service Tax amounting to Rs. 12,62,053/ (Including Cesses) (Rupees Twelve Lakh Sixty Two Thousand Fifty Three only) as discussed in para above under Section 73 of the



Finance Act, 1994 read with Section 174(2) and Section 142(8)(a) of the CGST Act, 2017.

(ii) I also confirm the demand of interest under Section 75 of the Finance Act, 1994 read with Section 174(2) and Section 142(8) (a) of the CGST Act, 2017;

(iii) I impose penalty of Rs, 10,000 upon the Noticee under Section 77 of the Act, read with Section 174(2) and Section 142(8)(a) of the CGST Act, 2017:

(iv) I also impose penalty of Rs. 12,62,053/- (Rupees Twelve Lakh Sixty Two Thousand Fifty Three only) on the Noticee u/s 78 of the Act, read with Section 174(2) and Section 142(8)(a) of the CGST Act, 2017, However, the Noticee may opt for reduced penalty of 25% of the Service Tax so determined if they pay outstanding service tax and interest within a period of thirty days from the date of receipt of this order provided that the reduced penalty is also paid within the said period in terms of clause (ii) of the second proviso to Section 78 (1).”

8. Petitioner has taken the plea that appeal challenging the said order was filed on 13.09.2022. It is urged that notices in question were served upon the outgoing partner who did not inform the petitioner about the same. However, we take note of the fact that there is no detail of such outgoing partner mentioned either in the grounds of appeal or even in the writ petition before us.



9. Even during the course of arguments learned counsel for petitioner was unable to give us the details of this outgoing partner; the date on which he exited the firm etc. It is further to be noted that upon filing of this appeal, intimation dated 14.06.2023, was duly sent to the petitioner noting the following discrepancies :

- “1. No proof of mandatory pre-deposit under Section 35F of Central Excise Act. 1944 which made applicable in service tax matters vide Section 83 of Finance Act, 1994, has been found with the appeal papers.
2. Appeal appears time bar, no condonation of delay application found with appeal papers.
3. Copy of Power of attorney, has not been found with the appeal papers.”

10. In reply thereto, petitioner vide its intimation dated 19.06.2023 submitted as under :-

- “1. That appellant seek yours office intervention and advice on pre-deposit under 35F of Central Excise Act.1944 which made applicable in service tax matters vide section 83 of finance act, 1994 as the assessing authority has taxed appellant on total turnover RS. 12.5 lac. Appellant seeks as duty payable on the amount to be calculated as prayed in the appeal and accordingly appellant seeks your intervention and advice the total pre-deposit under section 35F of central excise act 1994.
2. As order were received on 16.12.2022 appellant did not find any time barred application as the appeal has been



filed within limitation period of ninety days. However, if the appellant authority finds there is delay in the matter appellant shall file application accordingly. Copy of receipt/acknowledgement Annexure-A-1 at page 9 of the appeal.

3. *Power of attorney by appellant in the favour of Advocates duly stamped has been submitted to your office. Copy of Power of attorney at page 24 of the appeal as per your office copy send in the email to the under signed.”*

11. Case of the petitioner is that respondent should have calculated the exact amount of pre deposit and it is only on such intimation that petitioner was enjoined upon to deposit the said amount. In our considered opinion this argument is devoid of any merit, hence rejected. It is duly noted by the First Appellate Authority in impugned order dated 22.12.2023 that personal hearing was afforded at that stage as well. Learned counsel was also called upon to ensure that pre-deposit be made on or before 20.12.2023 but needful was not done. Department has afforded number of opportunities to petitioner to do the needful but apparently no amount of pre-deposit, even as per its own calculation was ever made by the petitioner. This clearly reflects adversely on the conduct of petitioner. Another aspect to be noted is that this writ petition has been filed in September 2025 for challenging order in appeal which was passed on 22.12.2023. There is not even a whisper of an explanation, leave alone a reasonable explanation for the delay in filing of this writ petition. Doubtlessly, there is no limitation for filing a writ petition



but at the same time it is a settled position that a writ petition should be filed within a reasonable time.

12. Admittedly, there is no limitation for filing of writ petition but at the same time, it is a settled position that litigant should approach the Court within a reasonable period of time. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Bharat Coking Coal Ltd. and others vs. Shyam Kishore Singh (2020) 3 SCC 411**; **Union of India and others vs. N. Murugesan and others (2022) 2 SCC 25**; **State of Orissa and another vs. Laxmi Narayan Das (Dead) through LRs and others 2023 LiveLaw (SC) 527** and **Bichitrananda Behera vs. State of Orissa and others 2023 AIR (SCC) 5064**.

13. It has been held by Hon'ble the Supreme Court in **Chairman, State Bank of India vs. M J James, (2022) 2 SCC 301** as under:-

“ What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is nonexistent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court /appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time.”



14. This position has been reiterated by Hon'ble the Supreme Court in the case of **Bichitrananda Behera** (supra).

15. As noted in the foregoing paras, there is no explanation leave alone a plausible explanation put forth by the petitioner for this delay. Viewed from any angle, we do not find any ground whatsoever for causing interference in this matter at this stage.

16. No other arguments was addressed.

17. Writ petition is accordingly dismissed being devoid of any merit.

(LISA GILL)
JUDGE

(RAMESH CHANDER DIMRI)
JUDGE

13.02.2026
anju

Whether speaking/reasoned	: Yes/No
Whether Reportable	: Yes/No