2026:AHC:230612

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4427 of 2026

M/S Bansal Sanitary Store

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Rishi Raj Kapoor
Counsel for Respondent(s)	:	C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Shri Rishi Raj Kapoor, learned counsel for the petitioner as well as Shri Shashikant Mishra, learned Standing Counsel for the State.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, petition is being decided at the fresh stage.

3. The case of the petitioner is that it happens to be a partnership firm having its GST registration at Aligarh engaged in Trading of Tiles etc. having GSTIN no. 09ADPPA2171A1Z0. According to the petitioner, during the course of the business, the petitioner had purchased total 1376 boxes of Ceramic Vitrified Tiles, in which 1050 boxes of Tiles covered with Tax Invoice No.2923206957 dated 27.5.2023, 196 boxes of Tiles Covered with Tax Invoice 2923206959 dated 27.5.2023, and 30 boxes of Tiles covered with 2923207205 dated 28.5.2023, from M/s Somani Ceramics Limited, Gujrat, and a tax invoice and e-way bill was also prepared. According to the petitioner, the vehicle in question in which the said items, they were intercepted and the statement of the driver in MOV-01, order for physical verification in MOV-02 and physical verification report in MOV-04 came to be issued and thereafter detention order came to be passed on 03.06.2023 from GST MOV-06 under Section 129(1) of the 2017 Act.

4. Assailing the said order, an appeal came to be preferred on 07.10.2023 along with the delay condonation application, however, the delay condonation application so accompanied with the appeal came to be rejected by the appellate authority on 26.09.2024 on the ground of delay that the

maximum period for preferring of an appeal under Section 107, is 90 days plus a grace period of 30 days, i.e. the power was with the appellate authority to condone the delay.

5. Questioning the order in original and the appellate order, the present petition has been preferred.

6. Learned counsel for the petitioner has submitted that he is confining his relief to the order dated 26.09.2024 passed by the appellate authority rejecting the appeal on the ground of delay. Submission is that in the delay condonation application, the applicant has taken the specific ground that he was suffering from medical ailments from 01.09.2023 to 06.10.2023 and medical certificates were also appended but the appellate authority by a cyclostyle order taking a ground that there is no power to condone for the delay beyond 120 days, the delay condonation application and consequently, the appeal was rejected. Learned counsel for the petitioner submits that the petitioner was suffering under medical ailments and that is why delay condonation application has been preferred and further the delay is of only 5 days beyond 120 days which ought to have been allowed, particularly, when the order impugned does not recite that the certificate so submitted was forced or fictitious.

7. Learned Standing Counsel on the other hand submits that whatever might be, though there happens to be a valuable right of preferring an appeal but it is not open for the petitioner who was the appellant who had preferred the appeal beyond delay, particularly, when he could have taken assistance and services of any other person in that regard for the purposes of filing of appeal. However, he submits that the appellate authority does not possess power to condone the delay beyond 120 days.

8. I have heard the submissions so made across the bar and perused the record.

9. Plainly and simply, the grievance of the petitioner at this stage is that the appellate order dated 26.09.2024 passed by the appellate authority is bereft of the reasons, particularly, when the delay is just over 5 days and further the delay had been adequately explained along with the medical certificates.

10. In the opinion of the Court, the merits of the matter are not required to be throttled on the ground of technicality. Looking into the nature of the nature

of the ground taken by the petitioner that he was suffering from medical ailments and certificate to the said extent was also annexed along with the delay condonation application.

11. Accordingly, in the fitness of the matter, the petition is been decided in the following terms:

(a) The order dated 26.09.2024 passed by Additional Commissioner Grade-2 (Appeal)-2nd, State Tax, Moradabad is rejecting the delay condonation application and the appeal is set aside.

(b) The appeal stand restored to its number.

(c) The delay in filing the appeal is condoned.

(d) The appellate authority shall proceed to decide the appeal while fixing a date in the first week of December and pass orders by 31.12.2026.

12. It is made clear that the Court has not entered into the merits of the matter.

13. Accordingly, the petition stands **disposed of**.

November 5, 2026
Ashu

(Vikas Budhwar,J.)

Digitally signed by :-
ASHUTOSH KUMAR PRAJAPATI
High Court of Judicature at Allahabad