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Neutral Citation No. - 2025:AHC:135383-DB

Court No. - 3

Case :- WRIT TAX No. - 3608 of 2025

Petitioner :- Atlantis Intelligence Ltd.
Respondent :- Union of India And 2 Others
Counsel for Petitioner :- Mohit Singh
Counsel for Respondent:- A.S.G.I.,C.S.C.,Gaurav Mahajan, Saumitra Singh

Hon'ble Shekhar B. Saraf.J.
Hon'ble Praveen Kumar Giri.J.

(Judgment dictated in open Court by Shekhar B. Saraf, J.)

1. Heard Ms. Anjali Jha Manish, learned counsel appearing on behalf of the petitioner, Mr. Gaurav Mahajan, learned Senior Standing Counsel appearing on behalf of the respondent No.2/Assistant Commissioner, CGST and Mr. Arvind Kumar Mishra, learned Standing Counsel for the Stateрespondent.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the impugned order in original dated January 1, 2025 passed by the Assistant Commissioner, CGST, Division -I, NOIDA. The prayers made out in the above writ petition are delineated below:

> "A. Issue a writ, order or direction in the nature of certiorari to quash the Order In Original bearing No.84/AC/CGST/Div-I/N/2024-25 dated January 31, 2025 passed by the learned Assistant Commissioner, CGST, Division-I, Noida; and/or.
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> B. Issue a writ, order or direction in the nature of certiorari to quash the Show Cause Notice dated 23.02.2022 issued by the Learned Assistant Commissioner, CGST, Division -I Noida and/or
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> C. Stay the operation of impugned Order in Original bearingNo.84/AC/CGST/Div-I/N/2024-25 dated 31.01.2025, passed by the Learned Assistant Commissioner, CGST, Division -I, Noida, during the pendency of the present petition;
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> D. Interim and ad-interim reliefs in terms of prayer clauses as above;"

3. Upon perusal of the record, it is clear that the impugned order was passed on January 31, 2025, while the writ petition was filed on July 3, 2025. It is to be noted that Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act'), provides for a statutory appeal against the order passed under Section 74 of the Act. The period prescribed therein is three months. By way of sub-section (4) to Section 107 of the Act, if sufficient cause is shown, the period may be extended for a month. As the Act provides for a specific period for filing of appeal and also provides for an extended period, if sufficient cause is shown for condoning the delay in filing of the appeal, Section 29(2) of the Limitation Act, 1963 would be applicable. Section 29(2) of the Limitation Act reads as under:

> "29. Savings.—
>
> (1) .....
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> (2) Where any special or local law prescribes for any suit, appeal orapplication a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

Ergo, Section 29(2) clearly excludes the application of Section 5 of the Limitation Act for the purpose of condonation of delay in special statutes.

4. It is admitted by the petitioner that the petitioner was served by registered email on the very same date of passing of the impugned order. However, learned counsel appearing on behalf of petitioner, submits that there was no service made to the petitioner by way of registered post.

5. Upon perusal of Section 169 of the Act, we are of the view that in the event the service is made by way of the registered email, the same would be

a good service and limitation would start from that date itself. The petitioner cannot be allowed to take a ground that the other modes of service that have been provided in clauses (a) to (f) of sub-section (1) to Section 169 of the Act have not been followed. If one were to read that for service to be complete more than one mode as has been prescribed under Section 169 of the Act is required to be followed, the entire purpose of the provision would become absurd. Such a reading is neither plausible nor can be countenanced by us.

6. Accordingly, we are of the view that service of the order by registered email is a valid service and the date on which such service is made would count as the date for the purpose of limitation.

7. The Supreme Court in Singh Enterprises v. Commissioner of Central Excise, reported in (2008) 3 SCC 70 has held that under the statute where specific limitation period is prescribed, Section 5 of the Limitation Act, has no applicability. Singh Enterprises (supra) categorically states that an appeal is required to be filed by the petitioner within the time frame provided in the special Statute. The relevant paragraph of the judgment is quoted hereinbelow:

> "10. Sufficient cause is an expression which is found in various statutes. It essentially means as adequate or enough. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. In the instant case, the explanation offered for the abnormal delay of nearly 20 months is that the appellant concern was practically closed after 1998 and it was only opened for some short period. From the application for condonation of delay, it appears that the appellant has categorically accepted that on receipt of order the same was immediately handed over to the consultant for filing an appeal. If that is so, the plea that because of lack of experience in business there was delay does not stand to reason. ITC case [(1998) 8 SCC 610] was rendered taking note of the peculiar background facts of the case. In that case there was no law declared by this Court that even though the statute prescribed a particular period of limitation, this Court can direct condonation. That would render a specific provision providing for limitation rather otiose. In any event, the causes shown for condonation have no acceptable value. In that view of the matter, the appeal deserves to be dismissed which we direct. There will be no order as to costs."

8. The three-judges Bench of the Supreme Court in Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another, reported in (2009) 5 SCC 791 while dealing with the issue of condoning the delay beyond the period specified in Section 35-H of the Central Excise Act, 1944 has reiterated the view of Singh Enterprises (supra) and has held that time limit prescribed for making reference and appeal to High Court is absolute and unextendable by Court under Section 5 of the Limitation Act. The limitation cannot be extended by applying a liberal interpretation. The relevant paragraph of the judgment is quoted hereinbelow:

> "32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

9. The Supreme Court in Assistant Commissioner (CT) LTU, Kakinada and Others v. Glaxo Smith Kline Consumer Health Care Ltd., reported in (2020) 19 SCC 681, has dealt with the moot question as to whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain challenge to the assessment order on the sole ground that the statutory remedy of appeal against the order stood foreclosed by the law of limitation. The Apex Court while dealing with the issue of power of appellate authority to condone delay under Section 31 of the Andhra Pradesh Value Added Tax, 2005 has held that if a complete mechanism is provided for challenging the assessment orders, that mechanism solely has to be followed, neither writ court nor Section 5 of the Limitation Act can condone the delay beyond prescribed statutory period. The relevant paragraphs of the judgment are quoted hereinbelow:

"16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article 142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a threeJudge Bench of this Court in ONGC v. Gujarat Energy Transmission Corpn. Ltd. [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5
SCC 42 : (2017) 3 SCC (Civ) 47] , the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises v. CCE [Singh Enterprises v. CCE, (2008) 3 SCC 70] , CCE v. Hongo (India) (P) Ltd. [CCE v. Hongo (India) (P) Ltd., (2009) 5 SCC 791] , Chhattisgarh SEB v. CERC [Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] and Suryachakra Power Corpn. Ltd. v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond maximum prescribed period in Section 125 of the Electricity Act.

17. The principle underlying the dictum in this decision would apply proprio vigore to Section 31 of the 2005 Act including to the powers of the High Court under Article 226 of the Constitution. Notably, in this decision, a submission was canvassed by the assessee that in the peculiar facts of that case (as urged in the present case), the Court may exercise its jurisdiction under Article 142 of the Constitution, so that complete justice can be done. This argument has been considered and plainly rejected in the following words : (ONGC case [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42 : (2017) 3 SCC (Civ) 47] , SCC pp. 48-51, paras 12-16)

> "12. In A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , while explicating and elaborating the principles under Article 142, Sabyasachi Mukharji, J. (as his Lordship then was) opined thus : (SCC p. 656, para 50)
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> > '50. … The fact that the rule was discretionary did not alter the position. Though Article 142(1) empowers the Supreme

> Court to pass any order to do complete justice between the parties, the court cannot make an order inconsistent with the fundamental rights guaranteed by Part III of the Constitution. No question of inconsistency between Article 142(1) and Article 32 arose. Gajendragadkar, J., speaking [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] for the majority of the Judges of this Court said that Article 142(1) did not confer any power on this Court to contravene the provisions of Article 32 of the Constitution. Nor did Article 145 confer power upon this Court to make rules, empowering it to contravene the provisions of the fundamental right. At AIR pp. 1002-03, para 12 : SCR p. 899 of the Reports, Gajendragadkar, J., reiterated that the powers of this Court are no doubt very wide and they are intended and "will always be exercised in the interests of justice". But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. It was emphasised that an order which this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. The court, therefore, held that it was not possible to hold that Article 142(1) conferred upon this Court powers which could contravene the provisions of Article 32.'

13. The said decision has been clarified by a Constitution Bench in Union Carbide Corpn. v. Union of India [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , wherein M.N. Venkatachaliah, J. (as his Lordship then was) speaking for the majority, ruled that : (SCC pp. 634-35, para 83)

> '83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the Supreme Court under Article 142(1) is unsound and erroneous. In both Prem Chand Garg v. Excise Commr.[Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , as well as A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] , cases the point was one of violation of constitutional provisions and constitutional rights. The observations as to

the effect of inconsistency with statutory provisions were really unnecessary in those cases as the decisions in the ultimate analysis turned on the breach of constitutional rights. We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers — limited in some appropriate way — is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Shri Sorabjee, learned Attorney General, referring to Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] , said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression "prohibition" is read in place of "provision" that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the Supreme Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not "complete justice" of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise.'

14. In this regard, another Constitution Bench in Supreme Court BarAssn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] opined : (SCC pp. 437-38, para 56)

> '56. As a matter of fact, the observations on which emphasis has been placed by us from the Union Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] , A.R. Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] and Delhi Judicial Service Assn. v. State of Gujarat[Delhi Judicial Service Assn. v. State of Gujarat, (1991) 4 SCC 406] , go to show that they do not strictly speaking come into any conflict with the observations of the majority made in Prem Chand Garg case [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] . It is one thing to say that "prohibitions or limitations in a statute" cannot come in the way of exercise of jurisdiction under Article 142 to do complete justice between the parties in the pending "cause or matter" arising out of that statute, but quite a different thing to say that while exercising jurisdiction under Article 142, this Court can altogether ignore the substantive provisions of a statute, dealing with the subject and pass orders concerning an issue which can be settled only through a mechanism prescribed in another statute. This Court did not say so in Union Carbide case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] either expressly or by implication and on the contrary it has been held that the Supreme Court will take note of the express provisions of any substantive statutory law and regulate the exercise of its power and discretion accordingly. …'

15. From the aforesaid decisions, it is clear as crystal that theConstitution Bench in Supreme Court Bar Assn. v. Union of India [Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409] , has ruled that there is no conflict of opinion in Antulay case [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372] or in Union Carbide Corpn. Case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584] with the principle set down in Prem Chand Garg v. Excise Commr. [Prem Chand Garg v. Excise Commr., AIR 1963 SC 996] Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide
Corpn. Case [Union Carbide Corpn. v. Union of India, (1991) 4 SCC 584]. As the pronouncement in Chhattisgarh SEB v. CERC

[Chhattisgarh SEB v. CERC, (2010) 5 SCC 23] , lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution.

16. We had stated earlier that we will be adverting to the passage inSuryachakra Power Corpn. Ltd.v. Electricity Deptt. [Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152 : (2017) 5 SCC (Civ) 761] There, the Court had referred to Section 14 of the Limitation Act. It fundamentally relied on M.P. Steel Corpn. v. CCE [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , wherein the Court after referring to certain authorities, analysed thus : (M.P. Steel Corpn. Case [M.P. Steel Corpn. v. CCE, (2015) 7 SCC 58 : (2015) 3 SCC (Civ) 510] , SCC p. 91, para 43)

> '43. … when a certain period is excluded by applying the principles contained in Section 14, there is no delay to be attributed to the appellant and the limitation period provided by the statute concerned continues to be the stated period and not more than the stated period. We conclude, therefore, that the principle of Section 14 which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.'''

(emphasis in original and supplied)

Similarly, in State v. Mushtaq Ahmad [State v. Mushtaq Ahmad, (2016) 1 SCC 315 : (2016) 1 SCC (Cri) 255] , this Court opined that where minimum sentence is provided for an offence then no court can impose lesser punishment on ground of mitigating factors.

18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the

> Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd. [Electronics Corpn. of India Ltd. v. Union of India, 2018 SCC OnLine Hyd 21 : (2018) 361 ELT 22] , which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India [Panoli Intermediate (India) (P) Ltd. v. Union of India, 2015 SCC OnLine Guj 570 : AIR 2015 Guj 97] and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE [Phoenix Plasts Co. v. CCE, 2013 SCC OnLine Kar 10432 : (2013) 298 ELT 481] . The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC [ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC
42 : (2017) 3 SCC (Civ) 47] In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose.

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22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order

even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

23. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur — after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017. On the other hand, in the affidavit of Mr Sreedhar Routh, Site Director of the respondent Company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the Company became aware about the irregularities committed by its erring official (Mr P. Sriram Murthy) in the month of July 2018, which presupposes that the respondent must have become aware about the assessment order, at least in July 2018. In the same affidavit, it is asserted that the respondent Company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order [Glaxo Smith Kline Consumer Healthcare Ltd. v. CCT, 2018 SCC OnLine Hyd 1985] at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the

statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the employee concerned (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.

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25. Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold."

(Emphasis added)

10. The Division Bench of the Rajasthan High Court in Malik Khan v. Chief Commissioner of GST & Central Excise, reported in (2023) 120 GSTR 66 also examined a similar situation wherein the assessee had not filed the statutory appeal under Section 107 of the Act and after the expiry of the limitation period prescribed thereunder directly approached the High Court. The Court reiterating the judgment of Supreme Court in Glaxo Smith Kline Consumer Health Care Limited (supra) has held that such a writ petition is not maintainable. The relevant paragraphs of the judgment are quoted hereinbelow:

"15. We are of the view that after expiry of the limitation period of filing appeal, the writ petition filed by the petitioner challenging the impugned order is not maintainable. This view of us is getting support from the decision of the honourable Supreme Court rendered in Assistant Commissioner (CT) LTU, Kakinada (supra), which is also relied upon by the counsel for the petitioner.

17. As observed earlier, the petitioner has not filed any statutory appeal before the appellate authority within the limitation period and has directly filed this writ petition before this court after eight months of the expiry of limitation, we are of the view that as per the law laid down by the honourable Supreme Court rendered in Assistant Commissioner (CT)

LTU, Kakinada's case (supra), the writ petition filed by the petitioner cannot be entertained as being not maintainable."

11. The Division Bench of Rajasthan High Court in M/s Thekedar Pankaj Sharma v. State of Rajasthan; reported in 2024:RJ-JP:17881-DB has also specifically dealt with the identical issue involved in the present writ petition and outrightly rejected the writ petition as not maintainable in view of the judgment of Supreme Court in Glaxo Smith Kline Consumer Health Care Limited (supra). The relevant paragraphs of the judgment are quoted hereinbelow:

"2. Though number of grounds have been urged in the writ petition as also before this Court to assail the correctness and validity of aforesaid show cause notice as also order dated 13.03.2023, learned counsel for the respondents, appearing on advance copy, brought to the notice of the Court that after the proceedings under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 were drawn against the petitioner which culminated in order dated 13.03.2023 resulting in levy of tax liability along with interest and penalty, the petitioner did not file any appeal either within the period of limitation as prescribed under Section 107 of the RGST Act, 2017/ the CGST Act, 2017 or within the maximum period thereafter which could be condoned under the power to condone the delay in filing of the appeal. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada and Others v. Glaxo Smith Kline Consumer Health Care Ltd. reported in (2020) 19 SCC
681(2020) 19 SCC 681, present writ petition is not maintainable and liable to be dismissed.

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6. Present is a case where the petitioner did not even file appeal andallowed the order passed in assessment proceedings to become final and thereafter approached this Court by filing writ petition seeking to challenge the determination of tax, interest and penalty by the competent authority vide order dated 13.03.2023. Present is not a case where the order under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 levying tax along with interest and penalty was passed without giving any opportunity of hearing to the petitioner. Even according to the petitioner, he was issued show cause notice and thereafter, impugned order was passed. In the writ petition, no plausible explanation has been offered as to why the petitioner did not take recourse to the remedy of statutory appeal. It, therefore, appears that the petitioner consciously did not choose to take recourse to the remedy of appeal as provided under Section 107 of the RGST Act,

2017/the CGST Act, 2017, but waited for the expiry of the period of limitation for filing appeal as also the maximum period of delay which could be condoned in the exercise of powers conferred upon the appellate authority under the provisions of Section 107 of the RGST Act, 2017/ the CGST Act, 2017

7. Having not preferred an appeal, the petition in the present case, in viewof the decision of Hon'ble Supreme Court in the case of Glaxo Smith Kline Consumer Health Care Ltd. reported in (2020) 19 SCC 681(supra), is not maintainable."

12. The Division Bench of the Delhi High Court in Addichem Speciallity LLP v. Special Commissioner, reported in (2025) 140 GSTR 451 referring to a catena of judgments of the Supreme Court and other High Courts has also held that the plenary power of the High Court cannot in any case exceed the jurisdictional powers under Article 142 of the Constitution of India, and even the Supreme Court cannot extend the period of limitation de hors the provisions contained in any statutory enactment. The court has summarised the precedents in paragraphs 69 and 70 which are quoted hereinbelow:

"69. In summary, the power to condone delay caused in pursuing a statutory remedy would always be dependent upon the statutory provision that governs. The right to seek condonation of delay and invoke the discretionary power inhering in an appellate authority would depend upon whether the statute creates a special and independent regime with respect to limitation or leaves an avenue open for the appellant to invoke the general provisions of the Limitation Act to seek condonation of delay. The facility to seek condonation can be resorted provided the legislation does not construct an independent regime with respect to an appeal being preferred.

Once it is found that the legislation incorporates a provision which creates a special period of limitation and proscribes the same being entertained after a terminal date, the general provisions of the Limitation Act would cease to apply.

70. In view of the forgoing discussion, as it is evident that each of the appeals was filed beyond the prescribed period of limitation provided by sections 107(1) and 107(4) of the CGST Act, the aforesaid writ petitions lack merit and are accordingly dismissed."

13. This Court in Garg Enterprises v. State of U.P., reported in (2024) 129

GSTR 299 penned by one of us has again followed the dictum laid down by Supreme Court in Singh Enterprises (supra) and Hongo India (P) Ltd. (supra) and held as follows:

> "7. The Central Goods and Services tax Act is a special statute and a selfcontained code by itself. Section 107 of the Act has an in built mechanism and has impliedly excluded the application of the Limitation Act. It is trite law that section 5 of the Limitation Act, 1963 will apply only if it is extended to the special statute. Section 107 of the Act specifically provides for the limitation and in the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of section 5 of the Limitation Act. Accordingly, one cannot apply section 5 of the Limitation Act, 1963 to the aforesaid provision."

14. Upon a perusal of the umpteen judgements cited above and sifting through the ratios laid down by the Supreme Court and High Courts in the various judgments, one may extract the principles with regard to maintainability of the writ petitions after expiry of the time frame for filing appeal stipulated in the special statute. The said principles are summarised below:

A. An order that this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution of India, but also be consistent with the substantive provisions of the relevant statutory laws.

B. In exercising powers under Article 226 of the Constitution of India and in assessing the needs of 'complete justice' of a cause or matter, the High Court should take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.

C. The prescription of limitation when the statute commands that delay may be condoned to a maximum of one month further would come within the ambit and sweep of the policy of

legislation. In such cases, Section 29(2) read with Section 3 of the Limitation Act would apply, and accordingly, the Courts shall have no power to condone the delay of any further period even in writ jurisdiction under Article 226 of the Constitution of India.

D. The principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case.

15. In the present case, the petitioner has come to this writ Court after the limitation has expired for filing an appeal under Section 107 of the Act. In light of the same, we are of the view that entertaining this writ petition would amount to allowing the petitioner to circumvent the statutory appellate procedure. In our view, no proper explanation has been provided by the petitioner for non-filing of the appeal within time and/or non-filing of the writ petition within the limitation period.

16. The dictum of the Supreme Court laid down in Singh Enterprises (supra), Hongo India (P) Ltd. (supra) and Glaxo Smith Kline Consumer Health Care Ltd. (supra) has been consistently followed by Supreme Court and various High Courts. In light of the same, this Court is of the view that this Court should not indulge the writ petitioner in condoning the delay as the present case is neither a case of gross violation of principles of natural justice nor patent illegality. Furthermore, writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the application of a statutory regime so as to render the provision of limitation provided in the statute otiose. Ergo, this Court ought not to entertain the present writ petition and the same deserves to be rejected in limine.

17. The writ petition, is accordingly, dismissed, with no order as to cost.

18. We make it clear that the petitioner shall be at liberty to proceed in accordance with law and if the petitioner files an appeal, the order passed by this Court and the observations herein shall not affect the decision of the appellate forum.

Order Date: 11.8.2025
DKS

(Praveen Kumar Giri.J.) (Shekhar B. Saraf.J.)