

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 2988 of 2022

Bikash Nirala

--- --- Petitioner

Versus

The Joint Commissioner (Appeals) CGST & CX, Ranchi --- --- --- Respondent

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CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : M/s Rajesh Kr. Tiwari, Ritesh Kr. Sahu &
Dr. Mamta Kumari, Advocate

For the Respondent : M/s P.A.S Pati, Ranjana Mukherjee, Advocate (for CGST)

07/29.11.2022 Heard learned counsel for the parties.

2. The Joint Commissioner (Appeals) CGST, Ranchi has dismissed the Order-In-Appeal No. 269/CGST/RAN/2021 preferred by the petitioner vide order dated 29.11.2021 as having been filed after lapse of extended time limit of 1 month in terms of Section 107 (1) & (4) of the CGST Act, 2017. The order of cancellation of the GSTIN registration of the petitioner dated 14.12.2019 was challenged in appeal by the petitioner. The said appeal was filed on 25.09.2021.

3. As per Section 107 (1) read with Subsection (4) a person aggrieved by any decision or order passed under the Act has a remedy to prefer an appeal within a period of 3 months from the date on which such decision or order is communicated to such person and if the appeal is filed beyond the period of 3 months, delay for the further period of 1 month can be condoned, if the appellant is able to satisfy that he was prevented by sufficient cause from presenting the appeal within the aforesaid period of 3 months.

4. The period of 3 months counting from the order-in-original dated 14.12.2019 would have expired on 13.03.2020. As such, the petitioner could have preferred an appeal with an explanation within a further period of 1 month from 13.03.2020, which he failed to do and ultimately preferred the appeal on 25.09.2021. The delay in filing the appeal persuaded the learned appellate authority to reject the application on ground of limitation. However, the Apex Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020*** has directed extension of the period of limitation in all proceedings before Court / Tribunal including the Apex Court w.e.f. 15.03.2020, initially vide order dated 08.03.2021. The said period was subsequently extended by orders passed by the Apex Court from time to time and lastly up to 28.02.2022 vide order dated 10.01.2022.

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5. Having regard to the orders passed by the Apex Court in ***Suo Motu Writ Petition (Civil) No. 3 of 2020***, the appeal preferred by the petitioner during the period from 15.03.2020 till 28.02.2022 could not have been dismissed as time barred. It is true that the petitioner has not filed any application for condonation of delay beyond the initial period of 3 months in terms of Section 107 (1) read with Subsection (4) of the CGST Act, 2017. However, that lapse on the part of the petitioner should not be taken against the petitioner as the extended period of 1 month under Section 107(4) fell within the period of Covid delays from 15.03.2020 till 28.02.2022, as directed to be excluded by the Apex Court.

6. Therefore, the matter is remanded to learned appellate authority i.e., Joint Commissioner (Appeal), CGST, Ranchi to decide the appeal on its own merits. The impugned order passed in Order-In-Appeal No. 269/CGST/RAN/2021 dated 29.11.2021 is set aside. We, however, make it clear that we have not made any comment on the merits of the case of the parties.

7. The writ petition is allowed.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)