

Court No. - 34

Case :- WRIT TAX No. - 1156 of 2022

Petitioner :- M/S Consummate Technologies Pvt. Ltd

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

Heard Sri Shubham Agarwal, learned counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel.

By means of present petition the petitioner has assailed the order dated 27.5.2022 passed by the respondent no. 2 by which the appeal filed by the petitioner has been dismissed and orders of cancellation of registration of the petitioner has been upheld by holding that the appeal to be barred by the limitation, losing sight of the fact that order of cancellation of registration was 9.8.2021 as is available even today on the G.S.T. portal. He has further submitted that no order with any other date cancelling the registration of the petitioner is available on the G.S.T. portal. Further, no date of hearing has been fixed by the show cause notice issued for cancellation of registration and registration has been cancelled by an ex-parte order passed on 24.2.2019 in violation of principles of natural justice.

Attention has been drawn towards the 'show cause notice' dated 9.4.2019 and further attention has been drawn towards the order for cancellation of the registration which in the first para indicates that the reply to the show cause notice has been received on 24.1.2019 whereas in subsequent paragraph it has been indicated that no reply to the show cause notice has been submitted.

Learned counsel has drawn attention of this Court towards Annexure no. 7 which is judgment and order dated 28.7.2022 in re: **Writ Tax No. 1004 of 2022 (M/S. Singh Group vs. State of U.P. and 2 others)**. As per learned counsel for the petitioner the facts and circumstances as well as the legal position is identical with the present case, therefore, in the light of the aforesaid judgment and order passed in re: **M/S. Singh Group (supra)** the instant writ petition may be allowed. For the convenience the order dated 28.7.2022 in re: M/S Singh Group (supra) is being reproduced as under :

"1. Heard Sri Shubham Agrawal, learned counsel for the petitioner and learned Standing Counsel for the State.

2. Present writ petition has been filed against the order dated 31.03.2022 passed by the first appellate authority whereby the said authority rejected the appeal filed by the petitioner against the order dated 17.09.2021, cancelling the petitioner's registration under the Uttar Pradesh Goods & Services Tax Act, 2017 (hereinafter referred to as the 'Act'). The appeal was dismissed as time barred, treating the date of the order impugned therein to be 11.09.2019 whereas undisputedly, the date of filing the appeal by the petitioner is 18.09.2021. In absence of Tribunal being constituted, the writ petition has been entertained.

3. Learned counsel for the petitioner states, even if the date of the order cancelling the petitioner's registration is taken to be 11.09.2019 still the first appeal filed by the petitioner on 18.09.2021 was well within time. He has placed reliance on order no.1 of 2020 dated 25.06.2020 issued by the Ministry of Finance and Notification dated 29.08.2021 issued under Section 168A of the Central Goods and Services Tax Act, 2017 as also an earlier order of this Court in M/s J.K. Infratech Vs Additional Commissioner & Another (2022) UPTC (111) 731.

4. Thus, it has been submitted, the period of limitation to seek revocation of order cancelling a registration was generally placed in abeyance up to 31.08.2021. The assessee was permitted to file an application seeking revocation of order dated 11.09.2019, up to 30.09.2021 - assuming that period of limitation to have not lapsed. That principle should be applied to appeal proceedings as well.

5. On the other hand, learned Standing Counsel would submit, no benefit has been granted with respect to filing of appeals. Therefore, period of limitation has to be strictly construed.

6. Having heard learned counsel for the parties, since the facts are not in dispute and they are self apparent from the perusal of the order of the appellate authority and the original authority and since the petitioner is not contesting the date of the original order, the petition is being disposed of, at this stage without calling for any counter affidavit.

7. Statutory remedies whether provided by way of filing application to recall an order or appeal remedy have to be real and available to the citizens who may be aggrieved by any order passed by a statutory authority.

8. Once the Government exercised its powers and reached a satisfaction (that there were defects on the common portal with respect to service of orders) and, provided relaxation of limitation, by suspending the period of limitation with respect to orders passed up to 12 June, 2020 and placed the date of any order passed up to that date, to be 31.08.2020 (on deemed basis) and further since the Government Notification dated 29.08.2021 suspended the period of limitation to file revocation applications for the period 01.03.2020 to 31.08.2021, it may never have been said that such an application if filed by the petitioner within the extended period of limitation, on 18.09.2021, would have been beyond time.

9. That being the intent of the Government to grant relaxation of limitation with respect to an order for cancellation of registration, it would defy plain logic to restrict that benefit to proceedings for revocation on such orders and to not extend the same to appeal proceedings. That construction if made, would give rise to an absurd situation. There would exist two dates of order cancelling a registration - one for the purpose of filing an application to revoke that order and another to file appeal there against.

10. The reason for relaxation of limitation being generic and external to the nature of remedies available under the Act - whether by way of revocation application or by way of appeal and, the relaxation of limitation being founded on defect or difficulty in service of order to be impugned in such proceedings, that relaxation of limitation would apply to both remedies.

11. It is so, because it is a matter of common knowledge that such relaxation was granted in the initial stages of implementation of GST regime, primarily for reason of difficulties experienced by all stake holders, in the working of the common portal.

12. Later, relaxation was also granted for mixed reasons including COVID circumstances. Here, it may not be forgotten, under various orders passed by this Court and the Supreme Court, the period of limitation to file appeals etc. was suspended from 15.03.2020 to 28.02.2022.

13. In such circumstances, the appellate authority has clearly erred in rejecting the appeal as time barred. The order dated 31.03.2022 is set aside and the matter is remitted to the appellate authority to pass a fresh orders, strictly in accordance with law, treating the appeal filed by the petitioner to be within limitation.

14. Accordingly, the writ petition is allowed."

I have perused the facts and circumstances of the present case and the facts and circumstances being dealt in re: **M/S Singh Group (supra)**, I find that the facts and circumstances as well as the observation of this Court in re: M/S. Singh Group covers the present controversy, therefore, the benefit of aforesaid order may be extended to the present petitioner.

Accordingly, in such circumstances, I hereby **allow the present writ petition**.

The Appellate Authority has clearly erred in rejecting the appeal as time barred, the order dated 27.5.2022 is set aside and the matter is remitted to Appellate Authority to pass a fresh order strictly in accordance with law treating the appeal filed by the petitioner within limitation.

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(Rajesh Singh Chauhan, J.)

Order Date :- 12.9.2022

Om.