



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPT No. 285 of 2022**

M/s Farhat Construction, A Proprietorship Firm having its registered Office at Flat No. 49, House No. 537, Street 5/B, Shanti Nagar, PO Supela, Bhilai, District Durg, Chhattisgarh, Through : Its Proprietor Israr Ahmad.

---- Petitioner**Versus**

1. State of Chhattisgarh, through : Its Secretary, Department of Commercial Tax, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Chhattisgarh.
2. Commissioner, Commercial Tax, GST Department, North Block, Sector - 19, Atal Nagar, Raipur, Chhattisgarh.
3. Joint Commissioner, (Appellate) State Tax, Durg Division, Durg Circle - 3, Durg, Chhattisgarh.
4. Asstt. Commissioner, (Appellate) State Tax, Durg Division, Durg Circle - 3, Durg, Chhattisgarh.

---- Respondents

For Petitioner : Mr. Ashish Shrivastava, Sr. Advocate with
Mr. Jai Prakash Tiwari & Mr. Rohisek Verma,
Advocates

For Respondents/State : Ms. Astha Shukla, Govt. Advocate

Hon'ble Shri Justice Parth Prateem Sahu**Order On Board****02/05/2023**

1. Petitioner has filed this petition seeking following relief (s) :-

“10.1 It is prayed that this Hon'ble Court may



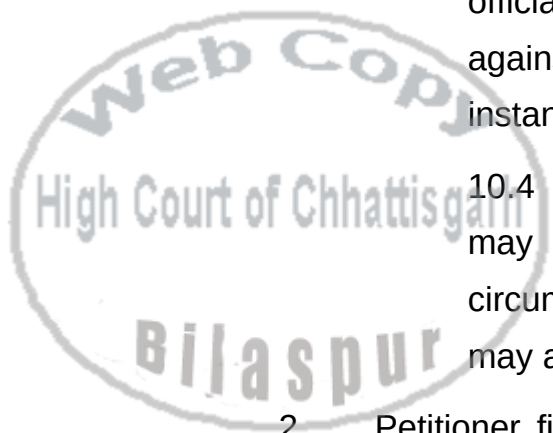
kindly be pleased to call for the entire records concerning the case of the petitioner firm from the possession of respondents for its kind perusal.

10.2 This Hon'ble Court may kindly be pleased to issue an appropriate writ, staying the effect, operation and execution of the impugned order dated 10.11.2022 issued by the respondent No.3, Joint Commissioner (Appellate), passed in Appeal Case No.265/2022/GST/Appeal, for the Assessment period April, 2020 to July 2020, by declaring the same to be illegal and inoperative in law.

10.3 That this Hon'ble Court may kindly be pleased to issue an appropriate writ commanding the official Respondents not to take any coercive action against the petitioner firm, during pendency of the instant writ petition, in the interest of justice.

10.4 Any other reliefs which this Hon'ble Court may think fit and proper in the facts and circumstances of the case, with cost of the petition may also please be granted to the petitioner."

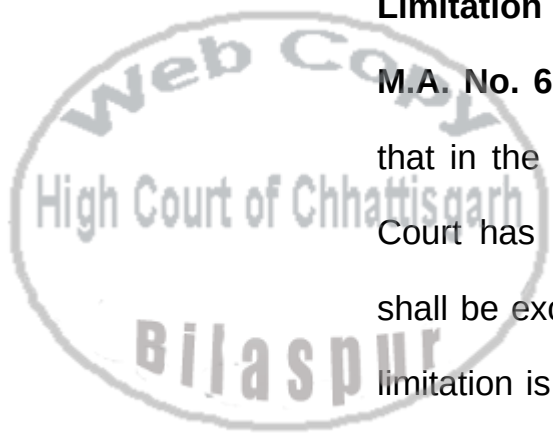
2. Petitioner firm is a proprietorship firm and registered under the Goods and Service Tax w.e.f from 01.07.2017. Respondents departments have assessed the short payment of GST by petitioner amounting to Rs.16,04,845/- (CGST Rs.8,02,423/- and SGST Rs.8,02,423/-). On 28-29.01.2021 the Adjudicating Authority passed an order with regard to difference of tax to the tune of Rs.33,66,672 and demand was issued under DRC-07. This order dated 28-29.01.2021 was put to challenge in an appeal as provided under Section 107 (1) of Goods and Services Tax Acts, 2017 (In short 'the Act of 2017'), which came to be





dismissed vide order dated 10.11.2022 (Annexure P-1) which made the petitioner to file this writ petition.

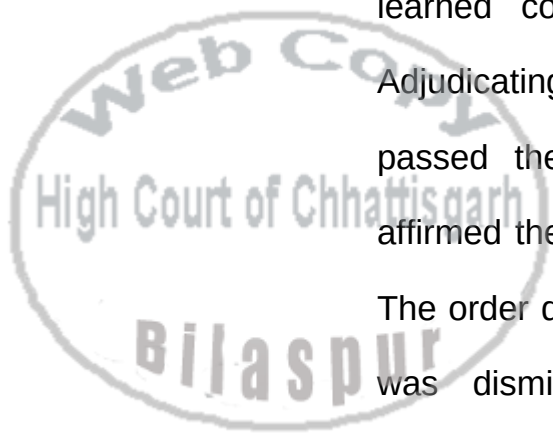
3. Learned counsel for petitioner submits that Appellate Authority dismissed the appeal only on the ground of limitation. The Appellate Authority has not admitted the appeal observing that it was barred by limitation. He also pointed out that the learned Appellate Authority while dismissing the appeal as barred by limitation has observed that the appeal is barred by 536 days, which is per-se wrong in view of the decision of Hon'ble Supreme Court dated 10.01.2022 in **Re:Cognizance for Extension of Limitation in Miscellaneous Application No. 21 of 2022 in M.A. No. 665 of 2021 in SMW (C) No. 3/2020**. It is contended that in the order dated 10th of January, 2022 Hon'ble Supreme Court has ordered that period from 15.03.2020 till 28.02.2022 shall be excluded for the purpose of limitation and therefore, the limitation is to be counted from 1st of March 2022 as directed by Hon'ble Supreme Court, therefore, the observations made by First Appellate Authority that appeal is barre by 536 days is absolutely wrong. The Appellate Authority has not taken note of the order passed by the Hon'ble Supreme Court and therefore, the matter be remitted back to the First Appellate Authority for reconsidering the appeal.
4. It is further submitted that the period when petitioner is required to file appeal is of Covid-19 pandemic period and at that time entire country was suffering. Petitioner also got affected with Covid-19 infection and therefore, the Fist Appellate Authority





considering the entire facts ought to have taken pragmatic view and condoned the delay which is only about 5 months. In support of his contention he placed reliance upon the decision of High Court of Orissa at Cuttack in **M/s. Shree Udyog Vs. Commissioner of State Tax Odisha, Cuttack and Others, W.P.(C) No. 14887 of 2021, decided on 10.06.2021** and the decision of High Court of Calcutta in case of **Kajal Dutta Vs. Assistant Commissioner of State Tax, Suri Charge & Ors., M.A.T. No. 1924 of 2022, decided on 20.01.2023.**

5. Learned counsel for respondent/state opposes the submission of learned counsel for petitioner and would submit that the Adjudicating Authority by applying the best judgment assessment passed the ex-parte adjudication order on 29.01.2021 and affirmed the demand of tax interest and penalty upon petitioner. The order dated 29.01.2021 was challenged in an appeal, which was dismissed by Appellate Authority vide order dated 10.11.2022. She contended that according to the decision of Hon'ble Supreme Court the period between 15.03.2020 till 28.02.2022 was excluded and fresh limitation period was starting from 1st of March, 2022. The appeal is filed after 10 months from the date of starting of limitation. According to provisions under Section 107 of the Act of 2017, the limitation for filing an appeal is only three months and further it can be extended for one month and thereafter, the Appellate Authority was not having any jurisdiction to condone the delay. The Act of 2017 is a special law, it is a entire Code in itself and the provisions of Limitation





Act is not applicable. It is contended that the Division Bench of this Court in case of **Nandan Steels And Power Limited Vs. State of Chhattisgarh & Ors. in W.A. No. 104 of 2021, decided on 10.08.2022** have considered the issue of application of Limitation Act and upheld the order passed by Single Bench dismissing the appeal observing that there is no power to entertain the application for condonation of delay beyond permissible period provided under the Act of 2017.

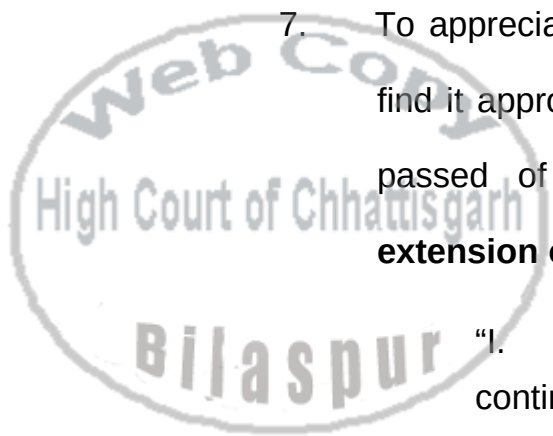
6. I have heard the learned counsel for parties and perused the documents placed on record.

7. To appreciate the submission of learned counsel for petitioner I find it appropriate to extract the relevant paragraph of the order passed of Hon'ble Supreme Court in **Re-cognizance for extension of limitation (Supra)**, which reads as under :-

"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the





event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

8. Hon'ble Supreme Court considering the outbreak of Covid-19 pandemic have excluded the period during Covid-19 pandemic period with which the entire country was suffering i.e. from 15.03.2020 to 28.02.2022. In the order Hon'ble Supreme Court has observed that all persons shall have a limitation period of 90 days from 01.03.2022. Even if the submission of learned counsel for petitioner is accepted that First Appellate Authority erred in observing in the impugned order that there was delay of 536 days in the light of the order of Hon'ble Supreme Court to be wrong then also whether excluding the period as observed by Hon'ble Supreme Court will bring the appeal filed by petitioner within limitation. The period of limitation of 90 days, which was extended by Hon'ble Supreme Court starts from 01.03.2022 and will come to an end on 30-31st of May, 2022. Admittedly petitioner has preferred the appeal on 07.10.2022. There is no



specific pleading in the writ petition as to how the order dated 28-29.01.2021 could not be challenged within extended period of limitation or further one month thereafter. In the format of appeal it is mentioned that he received copy of order on 07.10.2022. In Clause-16 of the appeal, which required to mention whether appeal is being filed after the prescribed period, it is mentioned as “No” and in Clause 17 with regard to details if there is delay have been left blank.

9. Perusal of copy of order dated 28-29.01.2021 would show that petitioner has submitted an application for certified copy of order on 07.10.2022 and on the same day he received the same.

10. According to the decision of Hon’ble Supreme Court, extending the limitation of three months comes to an end in the month of May, 2022 and further one month on the satisfaction of the Appellate Authority if to be added, as already provided under Section 107 (4) of the Act of 2017 will expire in the end of June.

11. The Division Bench of this Court in **Nandan Steels and Power Limited (Supra)** has decided the appeal upholding the order passed by Single Bench observing that there is no power to entertain the application for condonation of delay beyond permissible period provided under the Act of 2017. Relevant paragraphs of the order in the said decision are extracted below, which reads as under :-

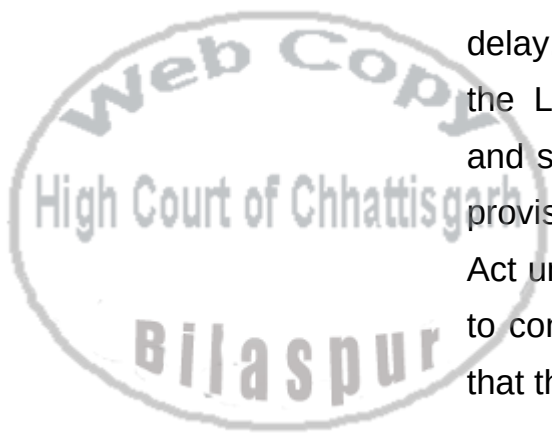
“8. The learned Single Judge held that in terms of Sections 107 (1) and 107 (4) of the CGST Act, the Appellate Authority has no power to entertain an



appeal beyond the period of one month as stipulated in Section 107 (4) and the Appellate Authority becomes *functus officio*. It is also held that there is no power to entertain the application for condonation of delay beyond the permissible period provided under the CGST Act.

9. Mr. Prateek Pandey, learned counsel for the appellant submits that delay that had occasioned was on account of the fact that the Chartered Accountant, who was authorised by the appellant to prefer an appeal, had suffered serious ailment, and therefore, an application for condonation of delay had been filed. In such circumstance, respondent No. 3 ought to have considered the application for condonation of delay. He has drawn our attention to Section 29(2) of the Limitation Act, 1963 (for short, 'Limitation Act') and submits that there being no express exclusion of provisions contained in Sections 4 to 24 of Limitation Act under the CGST Act, respondent No.3 had power to condone the delay on satisfaction being arrived at that there was sufficient cause for the delay.

10. Mr. Vikram Sharma, learned Deputy Government Advocate, appearing for the respondents, submits that the CGST Act is a special law and same is a complete code by itself and the relevant provisions make it abundant clear that the provisions of Limitation Act are necessarily excluded, and therefore, the submission of Mr. Pandey that there is power to condone delay even beyond the period prescribed is entirely misplaced. He relies on the judgments of the Hon'ble Supreme Court in the cases of *Patel Brothers v. State of Assam*, reported in (2017) 2 SCC 350, *P. Radha Bai and Others v. P. Ashok Kumar and Another*, reported in (2019) 13





SCC 445 and Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others, reported in (2008) 3 SCC 70.

13. A reading of Section 29(2) would go to show that the section is divided into two parts, manifested by the expression “and”. The first part stipulates that the limitation period prescribed by the special law or local law will prevail over the limitation period prescribed in the Schedule to the Limitation Act. The second part of Section 29(2) of the Limitation Act ordains that the Sections 4 to 24 of the Limitation Act will apply for determining the period of limitation “only insofar as, and to the extent which, they are not expressly excluded by such special or local law.”(emphasis given)

15. In the case of *Hukumdev Narain Yadav v. Lalit Narain Mishra*, reported in (1974) 2 SCC 133, the Hon'ble Supreme Court had observed that in the context of a special law it will be necessary to examine whether the scheme of special law and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the various matters provided by it and if on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act in question. Accordingly, it was held that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of subject matter and





scheme of the special law exclude their operation.

16. The aforesaid principle was reiterated by the Hon'ble Supreme Court in the case of *Commissioner of Customs and Central Excise v. Hongo India Private Limited & Another*, reported in (2009) 5 SCC 791. At paragraph 35, it was observed as follows:

“It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central





Excise Act relating to filing of reference application to the High Court.”

32. A perusal of the above Sections go to show that in respect of an appeal to the High Court, the Legislature has not provided any specific time limit for entertainment of an appeal after expiry of the period of limitation if it is satisfied that there was sufficient cause for not filing the same within the period of limitation. In respect of an appeal under Section 107(1) of CGST Act, it is provided that the appeal may be filed within three months from the date on which the decision or order is communicated to such person. Section 107(4) of CGST Act lays down that on sufficient cause being shown, the Appellate Authority may allow the appeal to be presented within a further period of one month. The same would go to show that the legislative intent was not to apply the Limitation Act in the proceedings to be taken under the CGST Act.....”

12. The submission of learned counsel for petitioner that as the period of delay has wrongly been assessed by Appellate Authority in the light of the order of Hon'ble Supreme Court in case of **Re-cognizance for extension of limitation (Supra)**, the matter be remitted back to the First Appellate Authority is also not sustainable as even after excluding the period between 15.03.2020 to 28.02.2022, filing of an appeal would not come within the extended period of limitation as ordered by Hon'ble Supreme Court and therefore, said exercise would serve no purpose.



13. Further in the decision of High Court of Orissa at Cuttack relied on by petitioner in **M/s. Shree Udyog (Supra)**, the appeal was filed within time limitation, however, the certified copy of the impugned order was filed after expiry of period of limitation and considering the Covid-19 pandemic situation and also the fact that the counsel and the client were infected with Covid-19, the order was passed extending the period of limitation. In the instant case period of limitation expired after normalization of Covid-19 pandemic situation.
14. For the forgoing discussions, I do not find any merit in this petition and it is accordingly dismissed.



Sd/-
(Parth Prateem Sahu)
Judge