

Court No. - 2

Case :- WRIT TAX No. - 1336 of 2024

Petitioner :- M/S Raj Trade House

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Ashish Kumar Mishra

Counsel for Respondent :- A.S.G.I.,C.S.C.,Krishna Ji Shukla

Hon'ble Piyush Agrawal,J.

1. The instant writ petition has been filed challenging the impugned order dated 08.12.2023 passed by the respondent no. 3 as well as the impugned order dated 25.06.2024 passed by the respondent no. 2; whereby, the appeal of the petitioner has been dismissed on the ground of limitation.

2. Learned counsel for the petitioner submits that on 08.09.2023, a show cause notice was served upon the petitioner on the ground of difference between the GSTR - 1 and GSTR - 9C. Thereafter the Proper Officer issued show cause notice under sections 73/74 of the GST Act. The petitioner did not submit reply on account of illness. He further submits that on 08.12.2023, the Proper Officer passed the impugned order, against which the petitioner preferred an appeal, which has been dismissed vide impugned order dated 25.06.2024. Hence, this writ petition.

3. Learned counsel for the petitioner further submits that as per section 74 of the GST Act, it is mandatory to observe an intention to evade tax willfully, but while passing the impugned order, no such intention has been observed. He further submits that the impugned order has been passed in violation of section 75(4) of the GST Act. In support of his submission, he has relied upon the judgement of this Court in ***M/s Sumit Enterprises Vs. the State of U.P. & 2 Others*** [Writ Tax No. 167 of 2023, decided on 09.10.2023]. Learned counsel for the petitioner has further relied upon the notification dated 02.11.2023, where relaxation has been provided if the person aggrieved could not file the appeal within the time prescribed under the Act and if the appeal filed on or before 31.01.2024, the same shall not be dismissed on the ground of limitation. He prays for allowing the writ petition.

4. Per contra, learned ACSC supports the impugned orders and submits that the appeal under section 107 of the GST Act was preferred beyond the period of limitation and therefore, the same has rightly been dismissed on the ground of limitation. He further submits that delay cannot be condoned beyond the period prescribed therein. In support of his submission, he has placed reliance on the judgements of this Court in ***M/s Yadav Steels Vs. Additional Commissioner & Another*** [Writ Tax No. 975 of 2023, decided on 15.02.2024] and ***M/s Garg Enterprises Vs. State of U.P. & Others*** [Writ Tax No. 291 of 2022, decided on 19.01.2024]. He prays for dismissal of the writ petition.

5. After hearing learned counsel for the parties, the Court has perused the records.

6. It is admitted fact that the appeal has been dismissed on the ground of limitation. Learned counsel for the petitioner has relied upon the notification dated 02.11.2023. On close scrutiny of the said notification, it is clear that if taxable person could not file appeal against the order passed by the Proper Officer on or before 31.03.2023 under sections 73 or 74 of the GST Act and if the appeal is preferred on or before 31.01.2024, the same will be considered on merit without taking recourse to the limitation. In the case in hand, the impugned order has been passed on 20.07.2023, much after the date mentioned in the aforesaid notification, i.e., 31.03.2023. Therefore, the said notification is of no aid to the petitioner.

7. Further, the judgement cited by the learned counsel for the petitioner in the case of **M/s Sumit Enterprises** (supra) nowhere deals with condoning the delay; whereby the appeal has been dismissed on the ground of limitation and therefore, the same is also of no aid to the petitioner.

8. This Court in **M/s Yadav Steels** (supra) has held as under:-

"4. This Court in M/s Abhishek Trading Corporation vs. Commissioner (Appeals) and another [Writ Tax No.1394 of 2023, decided on 19.1.2024) Neutral Citation No. 2024: AHC: 9563], after relying on the Supreme Court judgments in Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and others reported in (2008) 3 SCC 70 and Commissioner of Customs and Central Excise v. Hongo India Private Limited and another reported in (2009) 5 SCC 791 has categorically held as follows:-

"7. The Central Goods and Services Act is a special statute and a self-contained code by itself. Section 107 of the Act has an inbuilt 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."

5. In Penuel Nexus Pvt. Ltd. -v- The Additional Commissioner Headquarters (Appeals) and Ors., reported in MANU/KE/3276/2023, the Kerala High Court held that the GST Act is a special statute and a self-contained code by itself and hence, Limitation Act will not apply. Relevant paragraph has been extracted below:

"10. The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 has an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted."

6. The aforementioned principle was reiterated by this Court in **Garg Enterprises -v- State of U.P. and Ors**, reported in MANU/UP/0197/2024. Relevant paragraph has been reproduced below:

"7. The Central Goods and Services Act is a special statute and a self-contained code by itself. Section 107 of the Act has an inbuilt 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."

7. Upon a perusal of Section 107 of the Act, it is clear that the appellate authority can only allow extension of a period of one month as provided in sub section (4) of Section 107 of the Act. In the present case, the appeal was filed approximately 66 days subsequent to the expiry of one month that was condonable under Section 107(4) of the Act. To make it more clear, the period within which the appeal could have been filed was three months plus a period of one month. However, in the present case the appeal was filed beyond the period of four months, and therefore, the appellate authority could not have condoned the delay even if sufficient cause was made out.

8. The significance of limitations in taxing statutes, such as the GST Act, cannot be overstated. These statutes govern the collection of taxes, which are vital for the functioning of a state or country. Limitation provisions ensure timely resolution of disputes and promote efficiency and fairness in tax administration. Tax laws are complex and often subject to interpretation, leading to disputes between taxpayers and tax authorities. Limitation provides a framework within which such disputes must be resolved, thereby preventing undue delays and ensuring that tax liabilities are determined within a reasonable time frame. This is crucial for both taxpayers and tax authorities as it promotes legal certainty and facilitates effective tax compliance.

9. Section 107 of the GST Act prescribes a specific limitation period within which appeals against certain decisions must be filed. This limitation period is integral to the functioning of the appellate mechanism under the GST Act and reflects the legislative intent to expedite the resolution of tax disputes. By imposing a time limit on the filing of appeals, Section 107 aims to prevent undue delay in the adjudication process and promote the efficient administration of the GST regime. On the other hand, Section 5 of the Limitation Act provides for the extension of prescribed periods in certain exceptional circumstances, such as when sufficient cause is shown for the delay.

10. In analyzing the conflicting interpretations concerning the exclusion of Section 5 of the Limitation Act as far as Section 107 of the GST Act is concerned, it is essential to consider the rationale behind the exclusion of the Limitation Act in certain special statutes, particularly in the context of taxation. Tax laws are often characterized by strict procedural requirements and time-bound deadlines, reflecting the need for expeditious resolution of tax disputes to ensure revenue certainty and fiscal stability.

11. The judgment rendered by the Calcutta High Court in the matter of S.K. Chakraborty & Sons (supra) fails to adequately consider the authoritative pronouncements of the Supreme Court in the cases of Singh Enterprises (supra) and Hongo India (supra) and hence the said judgment is of no precedential value, and accordingly, the view expressed therein is not accepted by this Court.

12. Taxing statutes like the GST Act embody a comprehensive framework with specific limitation provisions tailored to expedite the resolution of tax-related matters. Section 107 of the GST Act, operates as a complete code in itself, explicitly delineating limitation periods for filing appeals and implicitly excluding the application of general limitation provisions such as Section 5 of the Limitation Act."

9. In the above judgement, it has been specifically held that delay in filing the appeal cannot be condoned beyond the prescribed period of limitation in the Act.

10. In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the judgements cited above, this Court does not find any merit in these writ petition.

11. The writ petition fails and the same is hereby dismissed.

Order Date :- 3.10.2024

Amit Mishra