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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**CWP No. 4899 of 2024****Reserved on: 19.12.2024****Date of decision: 21.12.2024**

M/s R. T. Pharma

...Petitioner

versus

Union of India & Ors.

...Respondents

*Coram****The Hon'ble Mr. Justice Tarlok Singh Chauhan,
Acting Chief Justice.******The Hon'ble Mr. Justice Satyen Vaidya, Judge.****Whether approved for reporting? Yes.***For the Petitioner:** Mr. Goverdhan Lal Sharma,
Advocate.**For the Respondents:** Mr. V. B. Verma, CGC, for respondent
No. 1.Mr. Vijay Arora, Sr. Advocate with
Ms. Lalita Sharma, Advocate, for
respondents No. 2 and 3.Mr. Anup Rattan, A.G. with Rakesh
Dhaulta, Mr. Sushant
Kaprate, Addl. A.Gs. and Ms.
Priyanka Chauhan, Dy. A.G., for
respondent No. 4-State.

Tarlok Singh Chauhan, ACJ

The instant petition has been filed for grant of the
following reliefs:-

“(i) For issuance of writ of certiorari or a writ in the
nature of Certiorari or any other appropriate writ to
declare the Notification No. 07/2023, dated
31.03.2023, which is in violation of the Article 14 of

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the Indian Constitution and Principle of parity as it provides different treatment to the assessee/dealers who had filed their GSTR-9/9C with delay before 01.04.2023 and those who have filed their GSTR-9/9C between 01.04.2023 to 31.08.2023 passed by the Ld. Jurisdictional Officer and extend the benefit of concessional late fee as provided in Notification 07/2023 - Central to the petitioner.

(ii) Be pleased to issue a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ order or direction, directing the respondents, its servants, subordinates, agents and successors in office to forthwith withdraw and/or cancel the impugned order dated 30.11.2023 passed by the respondent No. 3 and the show cause notice dated 22.08.2023 issued under Section 74 of the Act imposing late fee of Rs. 12,71,754/-.

2. The petitioner is engaged in the business of manufacturing and sale of medicines and registered with the Goods and Service Tax Department vide GSTN No. 02AADFR7491K1ZY. The due date for submission of GSTR 9 return alongwith reconciliation statement in form GSTR 9C was fixed as on 07.02.2020. However, the petitioner could not submit the same in time due to instability and financial distress and submitted the same on 13.03.2023. The CBIC issued Notification No. 07/2023, dated 31.03.2023 for waiver of late fee in excess of Rs. 20,000/-. The petitioner was issued

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show cause notice on 22.08.2022 by the respondent contending that the petitioner is not entitled for the benefit of the Notification No. 07/2023 dated 31.03.2023 as the same provides the benefit of waiver of late fee to the tax payers who has filed the GSTR 9 and 9C returns during the period from 01.04.2023 to 30.06.2023 and the respondent proposed late fee of Rs. 12,71,754/-. The petitioner submitted reply of the notice and requested the respondent to allow the benefit to the Notification No. 07/2023, dated 31.03.2023 by taking lenient view. However, the respondent denied the benefit to the petitioner and confirmed the liability of late fee on the petitioner as he cannot go beyond the Notification No. 07/2023 dated 31.03.2023 which provides benefit to a particular set of people who has filed GSTR 9 and 9C returns from 01.04.2023 to 30.06.2023.

3. It would be noticed from the aforesaid pleadings that the instant writ petition is inspired by the Notification No. 07/23, dated 31.03.2023, which reads as under:-

“[TO BE PUBLISHED IN THE GAZETTE OF INDIA,
EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (1)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION
NO. 07/2023-CENTRAL TAX

New Delhi, dated the 31 March, 2023

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S.O(E)-In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017 (12) of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby waives the amount of late fee referred to in section 47 of the said Act in respect of the return to be furnished under section 44 of the said Act for the financial year 2022-23 onwards, which is in excess of amount as specified in Column (3) of the Table below, for the classes of registered persons mentioned in the corresponding entry in Column (2) of the Table below, who fails to furnish the return by the due date, namely:-

Table

Serial Number	Class of registered persons	Amount
(1)	(2)	(3)
1.	Registered persons having an aggregate turnover of up to five crore rupees in the relevant financial year.	Twenty-five rupees per day, subject to a maximum of an amount calculated at 0.02 per cent, of turnover in the State or Union territory.
2.	Registered persons having an aggregate turnover of more than five crores rupees and up to twenty crore rupees in the relevant financial year.	Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 per cent. of turnover in the State or Union territory.

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Provided that for the registered persons who fail to furnish the return under section 44 of the said Act by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22, but furnish the said return between the period from the 1 day of April, 2023 to the 30th day of June, 2023, the total amount of late fee under section 47 of the said Act payable in respect of the said return, shall stand waived which is in excess of ten thousand rupees.

[F. No. CBIC-20013/1/2023-GST]

(Alok Kumar)
Director”

4. Learned counsel for the petitioner has placed reliance on the decision of the Kerala High Court under similar circumstances in the case of **Anishia Chandrakanth vs. Superintendent, Central Tax and Central Excise in W.P. (C) Nos. 30644, 32069, 38545, 38547, 38891, 39203 & 40762 of 2023 reported in (2024) 04 KL CK 0099 dated 10.07.2024**, more particularly para 25 thereof, which reads as under:-

“25. When the Government itself has waived late fee under the aforesaid tow notifications Nos. 7/2003 dated 31.03.2023 and 25/2023 dated 07.07.2023 in excess of Rs. 10,000/-, in case of non-fliers there appears to be no justification in continuing with the notices for non payment of late fee for belated GSTR 9C, that too filed by the taxpayers before 01.04.2023, the date on which one time amnesty commences.

In view of the aforesaid discussion, I am of the view that notices are unjust and unsustainable to the extent it

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sought to collect late fee for delay in filing GSTR 9C. However, it is made clear that the petitioners will not be entitled to claim refund of the late fee which has already paid by them over and above Rs. 10,000/-."

5. Learned Counsel for the respondents on the other hand would submit that the amnesty scheme under Notification No. 7/2023, dated 31.03.2023 is applicable to only those who failed to file their returns within time stipulated therein, whereas in this writ petition, the time for filing return expired on 07.02.2020 and that the petitioner filed return on 13.03.2023 and, therefore, the petitioner's case is not covered by the aforesaid notification.

We have considered the submissions made by the learned counsel for the parties and have gone through the material placed on record.

6. It is evident that the intention of the Government is not to harass the assessee, who come forward to file their return for the assessment years mentioned in the notification within the stipulated period. Thus, it would imply that the benefit would extend to the petitioner as well, who filed the return although belatedly on 13.03.2023, which is before the cut off date mentioned in the above notification

7. It would be unjust to deny the benefit to the petitioner merely because the petitioner filed the return prior to the issuance of the amnesty notification dated 31.03.2023,

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confined to amnesty only to those who filed the return between 01.04.2023 and 30.06.2023.

8. The intention of the government in issuing the aforesaid notification was to encourage filing of returns. Therefore, this Court is of the view that the petitioner is entitled to the benefit of notification dated 31.03.2023.

9. Under these circumstances, the impugned order dated 30.11.2023 passed by respondent No. 3 and the show cause notice dated 22.08.2023 issued under Section 74 of the Act are set aside and the case is remanded back to the third respondent with a direction to pass fresh order on merit by extending the benefit of notification dated 31.03.2023 in accordance with law as expeditiously as possible preferably within three months from the receipt of the copy of this order.

10. The writ petition is allowed in the aforesaid terms. Pending application, if any, stands disposed of. No costs.

(Tarlok Singh Chauhan)
Acting Chief Justice

(Satyen Vaidya)
Judge

21.12.2024
(sanjeev)