Court No. - 1

Case :- WRIT TAX No. - 291 of 2022

Petitioner :- M/S Garg Enterprises
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- B.K.Singh Raghuvanshi,Abhishek Gupta
Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Abhishek Gupta, learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated January 18, 2022 passed by the appellate authority being the Additional Commissioner, Grade-II (Appeal)-1st, Commercial Tax, Agra under Section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act").

3. By the aforesaid order, the appellate authority dismissed the appeal filed by the petitioner on the ground that the same was time barred as it was filed beyond the period of four months. In the order impugned, it has clearly been pointed out by the the appellate authority that the order impugned has been passed on August 2, 2019, whereas the appeal was filed on December 27,

2021, that is, after the period of more than 28 months and way beyond the time prescribed under Section 107 of the Act.

4. Perusal of the record shows that the appeal was filed beyond time and when there is no dispute with regard to filing of the appeal beyond the time prescribed, this Court under the extraordinary jurisdiction cannot interfere with the appellate authority's order as the application of Limitation Act, 1963 does not apply to Section 107 of the Act.

5. The Supreme Court in **Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others** reported in **(2008) 3 SCC 70**, while dealing with a similar issue as in the present case, has held as under:

"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

6. In **Commissioner of Customs and Central Excise v. Hongo India Private Limited and Another** reported in **(2009) 5 SCC 791**, the Supreme Court has reiterated its stand and held as under:

"31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. [(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v. CCE [(2008) 3 SCC 70] concluded that: (Punjab Fibres Ltd. case [(2008) 3 SCC 73] , SCC p. 75, para 8)

"8. … the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. 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. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

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.

8. In light of the above, no interference is required in this petition and the same is, accordingly, dismissed.

Order Date :- 19.1.2024
Kuldeep

(Shekhar B. Saraf,J.)