

A.F.R.

Court No. - 1

Neutral Citation No. - 2024:AHC:26169

Case :- WRIT TAX No. - 975 of 2023

Petitioner :- M/S Yadav Steels Having Office

Respondent :- Additional Commissioner And Another

Counsel for Petitioner :- Suresh Chandra Pandey, Saurabh Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

1. Heard learned counsel for the parties.
2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated January 23, 2023 passed under Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act'). By virtue of this order, the appeal filed by the petitioner was dismissed on the ground of limitation, as the same was filed approximately 66 days beyond the date of limitation.
3. Counsel on behalf of the petitioner has fairly submitted that the appeal under Section 107 of the Act was filed beyond time. However, counsel on behalf of the petitioner relies on a Division Bench judgment of Calcutta High Court in the case of **S.K. Chakraborty & sons vs. Union of India and others** reported in **2024-T.L.D.-22-CAL** to argue that Section 5 of the Indian Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act') would be attracted as Section 107 of the Act does not expressly or impliedly exclude the attraction of Section 5 of the Limitation Act.
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 delayed 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.

13. Accordingly, the present writ petition is without any merit and is dismissed.

Order Date :- 15.2.2024
Rakesh

(Shekhar B. Saraf, J.)