

(2021) 01 CHH CK 0022
Chhattisgarh High Court
Case No: WPT No. 3 Of 2021

Sujeet Jaiswal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Jan. 21, 2021

Acts Referred:

- Goods And Services Act 2017 - Section 107, 129(1)(b)
- Constitution Of India, 1950 - Article 142, 226, 227

Hon'ble Judges: P. Sam Koshy, J

Bench: Single Bench

Advocate: Sabyasachi Bhaduri, Ramakant Mishra

Final Decision: Dismissed

Judgement

P. Sam Koshy, J

1. The challenge in the present writ petition is to the order Annexure P/1 dated 09.01.2020 passed by the Joint Commissioner (Appeals) in Appeal

Case No. 306/GST/2019. Vide the said impugned order the appeal that the petitioner had preferred under Section 107 of the GST Act, 2017 has been dismissed on the ground of barred by limitation.

2. The facts of the case is that the respondents herein vide his order dated 15.10.2018 has imposed a penalty invoking the provisions of Section 129(1)

(b) of the GST Act, 2017. Against the said order, the petitioner preferred an appeal under Section 107 of the aforesaid Act of 2017 on 21.05.2019. It

is this appeal which has been rejected on the ground of limitation.

3. For dealing with the issue it would be relevant at this juncture to first quote the relevant provisions of the appeal and the period of limitation

prescribed therein. For ready reference Sub-section (1) and (4) reads as under:-

â€œ129. Detention, seizure and release of goods and conveyances in transit. -

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in

contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the

said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be

released,-

(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on

payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods

comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in

case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less,

where the owner of the goods does not come forward for payment of such tax and penalty;

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) xxxxxx

(3) xxxxxx

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.â€

4. From the plain reading of the aforesaid two provisions, it clearly reflects that the Appellate Authority has been given the power to condone the

delay of only one month i.e. 30 days and not beyond that. Thus, from the plain reading of the provisions it clearly establishes the fact that the

provisions of Section 5 of the Limitation Act would not be governing the field in view of the specific period of limitation and the period for condonation

of delay being provided. The original order was dated 15.10.2018. The appeal had to be filed within three months i.e. by 15.01.2019. If for some

reason the appeal would not be filed under any circumstances, it ought to have been filed within a further period of 30 days. Having not done so within

the said stipulated 30 days period, any subsequent filing of the appeal beyond the extended 30 days period the Appellate Authority would not have the

power to condone the delay. The Appellate Authority in the given circumstances does not have any further powers to entertain an appeal beyond the

period of 30 days after the expiry of the original period of limitation, which in other word means that the Appellate Authority becomes functus officio

once when the period of 4 months are over.

The fact that there is an upper limit of only one month provided in the statutes itself for preferring an appeal beyond the prescribed period of three

months itself establishes the fact that beyond that extended period of one month after the expiry of period of limitation, the Appellate Authority

becomes functus officio and would not be in a position to entertain the appeal nor does he have the power to condone the delay.

6. The issue so far as condonation of delay is concerned beyond the limit permissible under the statutes came up for consideration before the Supreme

Court recently in the case of M/s N.V. International vs. State of Assam and others. In the said judgment, the Hon'ble Supreme Court though under

the provisions of Arbitration Act had considered the aspect whether an authority could condone the delay beyond the permissible period provided

under the statutes. That disallowing the contention and dismissing the appeal the Supreme Court observed that once when the period is prescribed,

beyond the said period the authority does not have the power to entertain the application for condoning the delay or else it will defeat the statutory

purpose.

7. A similar view has further been reiterated by the Supreme Court in the case of Assistant Commissioner (CT) LTU, Kakinada & Ors. -Versus-

Glaxo Smith Kline Consumer Health Care Limited. Wherein again, the Hon'ble Supreme Court taking the same stand that beyond the stipulated

period, the Appellate Authority could not have condoned the delay even if certain extraordinary situation is given seeking condonation of delay.

14. *a priori*, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the

Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution.

The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under

Article 226 of the Constitution.

(15) We may now revert to the Full Bench decision of the Andhra Pradesh High Court in *Electronics Corporation of India Ltd. (supra)*, which had

adopted the view taken by the Full Bench of the Gujarat High Court in *Panoli Intermediate (India) Pvt. Ltd. v. Union of India*¹⁹ and also of the

Karnataka High Court in *Phoenix Plasts Company v. Commissioner of Central Excise (Appeal-I)*, Bangalore²⁰. The logic applied in these decisions

proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the

jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction

of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the

assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction "by overstepping or

crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no

procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious

remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the

maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal

of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the

dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. â€

8. In view of the authoritative decision rendered by the Hon'ble Supreme Court in the aforesaid two judgments, this Court does not find a strong case made out by the counsel for the petitioner in the instant case calling for an interference to the order passed by the Respondent No. 3 vide his/her order dated 09.01.2020. As a consequence, the writ petition fails and is accordingly, rejected.