

Court No. - 1

Case :- WRIT TAX No. - 1368 of 2023

Petitioner :- M/S S Kumar Construction

Respondent :- Commissioner Of Central Excise (Appeals), Central Goods And Services Tax (Appeals) And Another

Counsel for Petitioner :- Rajneesh Shukla

Counsel for Respondent :- Parv Agarwal

(Judgement dictated in Court)

Hon'ble Shekhar B. Saraf,J.

1. Heard Ms. Riya Soni, learned counsel appearing on behalf of the petitioner and Mr. Parv Agarwal, learned counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the order dated September 20, 2023 passed by the appellate authority that is the Commissioner of Central Excise (Appeals), Noida under Section 85 of the Finance Act, 1994 (hereinafter referred to as the 'Finance Act').

3. By the aforesaid order, the appellate authority had dismissed the appeal filed by the petitioner on the ground that the same was time barred as it was filed beyond the period of 85 days. In paragraphs 6.1 to 6.7 of the aforesaid order, the appellate authority has clearly pointed out that the petitioner has received the order in original on January 17, 2023 whereas the appeal was filed on June 9, 2023, that is, after a delay of 85 days beyond the limitation prescribed under the Act.

4. Upon a perusal of the memo of appeal filed by the petitioner, it is clear that the order was communicated on January 17, 2023, as admitted by the

petitioner itself. The petitioner has explained the delay stating that the delay was caused due to the ignorance of authorised representative/legal counsel and also because the petitioner suffered with medical emergency caused by acute viral hepatitis between the period April 10, 2023 to May 31, 2023. In addition to the above explanation, the petitioner has relied on several judgments of the High Courts including a judgment of this Court in **Jai Hind Bottling Company (P) Ltd. vs. Commissioner (Appeals) Central Excise, Allahabad** reported in **2002(146) ELT 273 (All.)** and submitted that in extra ordinary circumstances, the writ court has the power to condone the delay. The petitioner has also relied upon a judgment of the Delhi High Court in **Pioneer Corporation v. Union of India** reported in **2016(340) ELT 63 (Del)** to argue that in exceptional circumstances and in the rarest of rare cases, the writ court has the power to condone the delay.

5. However, as pointed out in the appellate order, which is under challenge before this Court, the Hon'ble Supreme Court in several judgments including the judgment in **Singh Enterprises vs. C.C.E., Jamshedpur** reported in **2008(221) ELT 163 (S.C.)** has held that under Section 35 of the Central Excise Act, the delay cannot be condoned beyond what is prescribed under the Central Excise Act as the language of the said section specifically provides for condonation of delay of additional 30 days only. Section 85 of the Act is in pari materia with the above section. One may examine the Supreme Court judgment in **Singh Enterprises' (supra)** wherein the Supreme Court held as follows:-

"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. Furthermore, in **Commissioner of Customs and Central Excise v. Hongo India Private Limited and another** reported in (2009) 5 SCC 791, the Supreme Court has 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 Finance Act, 1994 is a special statute and a self-contained code by itself having an inbuilt mechanism wherein it has impliedly excluded the application of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act').

8. It is a trite law that the power of Section 5 of the Limitation Act will be available only if it is extended to a special statute. The adjudication of matters involving statutory timelines often raises questions regarding the interplay between general statutes such as the Limitation Act and special statutes with their own prescribed limitations.

9. Special statutes such as the Finance Act, 1994, or the Central Excise Act are enacted to address specific areas of law comprehensively. These statutes often contain detailed provisions governing procedural aspects, including timelines for initiating legal proceedings, such as appeals. Courts have consistently held that when a special statute contains provisions governing limitation periods, it impliedly excludes the application of general statutes such as the Limitation Act. The rationale underlying this principle is rooted in the notion that the legislature, in enacting a special statute, intends to provide a comprehensive and exhaustive regime governing all aspects of the relevant legal domain.

10. The principle of statutory interpretation embodies a fundamental tenet of legal reasoning: fidelity to legislative intent. In the context of limitation under special statutes, this principle assumes paramount importance, guiding courts in their adjudicative function. While the court retains discretionary authority in certain matters, the primacy accorded to limitation under special

statutes operates as a circumscribing principle delineating the boundaries within which judicial discretion may be exercised.

11. The jurisprudential foundation supporting the primacy of limitation under special statutes over general statutes is multifaceted. Firstly, it recognizes the legislature's intent to create a cohesive and self-sufficient legal framework tailored to the specific nuances of the relevant legal domain. By providing detailed provisions governing limitation period, the legislature ensures certainty and predictability in legal proceedings, thereby promoting efficiency and expeditious resolution of disputes. Moreover, the exclusion of general statutes like the Limitation Act from the purview of special statutes serves to maintain the integrity and coherence of the legislative scheme, preventing potential conflicts and inconsistencies in statutory interpretation.

12. In light of the above, no interference is warranted with the impugned order. Accordingly, this writ petition is dismissed.

Order Date :- 14.5.2024

Rakesh

(Shekhar B. Saraf, J.)