

Court No. - 10

Case :- WRIT TAX No. - 229 of 2022

Petitioner :- M/S Limra Developers

Respondent :- Additional Commissioner And Another

Counsel for Petitioner :- Shyam Sunder, Shubham Agrawal, Sudhir Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard Sri Shubham Agrawal, learned counsel for the petitioner and Sri Rishi Kumar, learned Standing Counsel for the respondents-State.

2. Through this writ petition, the order passed by respondent No.2 cancelling registration of the Goods and Service Tax of the petitioner as well as order passed by first Appellate Authority dated 04.09.2021 have been assailed.

3. The Assessee, who was earlier registered under the U.P. Goods and Service Tax Act, was served with a show cause notice on 20.09.2019. A reply was required to be filed by the petitioner within 7 days, which he failed to do so. The show cause notice mentioned that in case of non filing of reply, the order of cancellation of registration would be passed.

4. On 01.10.2019, the Taxing Authority cancelled the registration of the petitioner. Against the order of cancellation, the appeal was preferred at a delayed stage before the first Appellate Authority on 14.4.2021. The first Appellate Authority has rejected the appeal on the ground of limitation hence the present writ petition.

5. Sri Shubham Agrawal, learned counsel appearing for the petitioner submitted that there is a provision for filing of revocation application under Section 30 of Central Goods and

Services Tax Act, 2017 (*hereinafter called as "Act of 2017"*). He further contended that the Assessee had an option of either of filing revocation application or statutory appeal under Section 107 of the Act of 2017. According to him, the Government had issued a notification on 25.06.2020 extending the period for filing of revocation application till 30th September, 2020. He then contended that the Assessee, instead of filing a revocation application, had preferred an appeal and the notification extending the period of filing of revocation application should be read as an extension of time for filing appeal also. He has relied upon decision of coordinate Bench of this Court in **M/s Singh Group vs. State of U.P. & 2 others 2022 U.P.T.C. (Vol.112) 1518.**

6. According to learned counsel, as the period stood extended till 30th September, 2020 and limitation was extended in suo motu proceedings by Hon'ble Apex Court in **Suo Motu Writ Petition (c) No.3 of 2020 (In re: Cognizance for Extension of Limitation)** till 28th February, 2021, thus the appeal filed by the Assessee was not time barred.

7. On the contrary, Sri Rishi Kumar, learned Standing Counsel submitted that the notification issued by Central Government on 25th June, 2020 is prospective in nature and the benefit, as claimed by the Assessee, cannot be granted to him as his registration was cancelled vide order dated 01.10.2019.

8. According to learned Standing Counsel, the provision of revocation cannot be equated with the provisions of appeal, as provided under Section 107 of the Act of 2017. He then contended that an appeal is filed against the order passed by the Assessing Authority and thus the period extending filing of revocation application cannot be read into the provisions of appeal. According to learned Standing Counsel, the judgment

Citation no. 2023 (01) GSTPanacea 12 HC Allahabad
rendered in the matter of **M/s Singh Group (supra)** is not
applicable in the present matter.

9. On merits also, learned Standing Counsel submitted that cancellation order is dated 01.10.2019 and if limitation is counted as per provisions of the Act of 2017 as well as the notification, the appeal filed by the Assessee is beyond time.

10. I have heard the respective submissions advanced by counsels and perused the material on record.

11. Without entering into the merits of the case, this Court finds that as the GST regime was introduced PAN India in the year 2017, there was some teething problem in its implementation. The Government was inviting suggestion and making improvement in the functioning of the provisions of the said Act.

12. Looking to the fact that the appeal has been filed by the Assessee-petitioner at a delayed stage and in between the COVID-19 pandemic had intervened, taking sympathetic view, this Court finds that the Assessee cannot be left remediless and the Appellate Authority should have entertained the appeal and decided the same on merits. The business cannot be hampered and suffered on mere technicalities of law and the Appellate Authority should have considered the appeal on merits.

13. Without making any comment on the judgment rendered by coordinate Bench or relying upon the said judgment, I find that the order passed by first Appellate Authority dated 04.09.2021 is unsustainable in the eyes of law and the same is hereby set aside. The matter is remitted back to the first Appellate Authority to reconsider the appeal of the Assessee-petitioner on merits and decide the same strictly in accordance with law

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without going into the question of limitation, preferably within
a period of one month from the date of production of certified
copy of this order before him.

14. Writ petition stands disposed of.

Order Date :- 9.1.2023

Kushal