

Court No. - 38

Case :- WRIT TAX No. - 902 of 2021

Petitioner :- M/S Brij Bihari Singh, Through Its Proprietor Shri Bihari Singh

Respondent :- Commissioner Commercial Tax Lucknow And Another

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. Heard Ms. Pooja Talwar, learned counsel for the assessee and learned Standing Counsel for the revenue.

2. Challenge has been raised to the order passed by the Additional Commissioner, Grade-2 (Appeal), Commercial Tax, Sonbhadra dated 12.10.2021 in Appeal No. GST - 47 of 2021 for the period 2019-20. By that order, that Appeal Authority has rejected as time barred the appeal filed by the petitioner against the order dated 28.02.2019, passed by the Proper Officer, cancelling the petitioner's registration, under Section 29 of the U.P. GST Act, 2017 (hereinafter referred to as the Act).

3. Having heard learned counsel for the parties and having perused the record, it transpires, the petitioner's registration under the Act was sought to be cancelled vide notice dated 28.02.2019. The petitioner submitted his reply thereto on 12.03.2019. However, in absence of the petitioner, the said registration was cancelled by an *ex parte* order dated 09.08.2019. Here, it is not in dispute that the petitioner was served with a copy of that order at the relevant time through the GSTN portal.

4. It is the grievance of the petitioner, despite best efforts, he could not file an appeal against that order for reason of continued malfunctioning/errors in the functioning of the GSTN portal (through which the appeal was to be filed).

Evidence was led by the petitioner to establish the continued difficulties faced by him. Thus, print of screen shots (of certain dates when the petitioner attempted to file that appeal), were brought on record in the first appeal, eventually filed on 20.09.2021.

5. The error arising in the working of the GSTN portal was resolved on 17.09.2021. Thereupon, the petitioner received the Ticket No. G2021090862061. The petitioner further received an e-mail from the GSTN authorities on 20.09.2021, informing him of the resolution made to the error in the working of the GSTN portal. The petitioner instituted the appeal through the GSTN portal on 20.09.2021.

6. At that stage, perhaps because the resolution offered by the GSTN portal, the order dated 28.02.2019 came to be displayed (again) on the GSTN portal, with a fresh Reference No. ZA090819050330H with date 17.09.2021. A copy of the same has been filed as Annexure No. 5 to the writ petition.

7. Whatever be the exact nature of communication sought to be made by the GSTN portal, it cannot be disputed that there exists clear evidence of admission made by the GSTN authority of difficulty faced by the petitioner in instituting his appeal against the order dated 28.02.2019, within the normal period of limitation, computed from the date of that order. Also, there is clear evidence of the said difficulty having been first resolved on 17.09.2021, well after expiry of the statutory period of limitation and the extended period of limitation, to file the appeal under Section 107 of the Act.

8. For ready reference, relevant extract of Section 107 of

"Section 107. Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act, 2017 (Act No. 12 of 2017) by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of central tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act or the Central Goods and Services Tax Act, 2017 (Act No. 12 of 2017) for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

9. Also, Rule 108 of the UP GST Rules, 2017 pertaining to procedure to file appeal reads as below:

"108. Appeal to the Appellate Authority.- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be

filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26.

(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the **FORM GST APL-01**, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation.— For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued."

10. Since the petitioner had been disabled from filing appeal (electronically) through the prescribed mode, against the order dated 28.02.2019, for reasons attributable solely to the GSTN authority and not for reasons attributable to the petitioner, it has to be assumed, for the limited purpose of the dispute at hand that the forum of appeal was first made available to the petitioner on 17.09.2021, and not earlier. It is so because 17.09.2021 was the date when GSTN authority first resolved the technical issues that had restrained or prevented the petitioner from approaching the appeal authority to file his appeal, against the order dated 28.02.2019.

11. The statutory right of appeal is not an illusory remedy

given to the assessee or a person aggrieved. It is an effective and real remedy granted within the structure of the statute to allow for redressal of genuine grievances. Therefore, the appeal forum (wherever provided) must be seen to exist and be freely available to the person seeking to approach it. There must exist no obstruction to access it within time and opportunity granted by the statute, to institute the appeal, before that authority.

12. In the present case, on a technical construction of the statute, the period of limitation to file an appeal against the order dated 28.02.2019 may appear to run from the date of the order being communicated to the petitioner i.e. 28.02.2019 itself. At the same time, that construction has to be rejected. It is so because, against the order dated 17.09.2021, no appeal could have been filed by the petitioner as it remained completely prevented/obstructed from filing such appeal, owing to technical glitches suffered by the GSTN portal on which that appeal may have been filed.

13. In face of clear evidence existing on record that such technical glitches were resolved by the GSTN authority on 17.09.2021, the period of limitation to file appeal started running from that date only. For the period 28.02.2019 to 17.09.2021, the period of limitation to file the appeal must always be deemed to have remained suspended for reason of appeal forum being not made available for filing of appeal by the petitioner, through prescribed mode.

14. Accordingly, the appeal was filed by the assessee on 20.09.2021, within time. The Appeal Authority has completely erred in rejecting the appeal as time barred. Accordingly, the present writ petition is **allowed**.

15. The order dated 12.10.2021 is quashed. The matter is remitted to the Appeal Authority to hear and decide the appeal on merits, treating the same to have been filed within time.

16. Since the matter has remained pending for very long, it is expected that the Appeal Authority shall take up the appeal proceedings on priority and hear and decide the same as expeditiously as possible, preferably within a period of three months from the date of production of a copy of this order.

Order Date :- 4.5.2022
Abhilash