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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 21.07.2022*

\+ **W.P.(C) 4712/2022**

RAILSYS ENGINEERS PRIVATE LIMITED & ANR. .. Petitioners
Through: Mr Sandeep Chilana, Mr Priyojeet Chatterjee, Ms Shambhavi Sinha and Mr Shekhar Sharma, Advs.

versus

THE ADDITIONAL COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX (APPEALS-II) & ANR. ..... Respondents
Through: Mr R. Ramachandran, Senior Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This writ petition is directed against the appellate order dated 28.06.2021, passed by respondent no.1.

1.1. Besides the challenge to the aforementioned order i.e., Order-in-Appeal, challenge is also laid to the show-cause notice (SCN) dated 29.10.2019 and the order dated 25.11.2019 passed by the concerned authority, cancelling the petitioners' registration.

2. What is not in dispute before us is that the Order-in-Appeal passed by respondent no.1 is founded on the ground that the appeal was instituted beyond the prescribed period of limitation.

3. Mr Sandeep Chilana, who appears on behalf of the petitioners, has assailed the aforementioned Order-in-Appeal, the SCN and the order cancelling the registration of the petitioners, broadly, on the following grounds:

(i) Firstly, the limitation period stood extended by various orders passed by the Supreme Court in *Suo Motu* W.P(C.) No.3/2020.

(ii) Secondly, the SCN dated 29.10.2019, on which the order cancelling the registration was premised, is an unsigned order which directed the appearance of the petitioners' authorized representative on 04.11.2019, without indicating the venue at which the proceedings would be conducted.

(iii) Thirdly, the order cancelling registration dated 25.11.2019, suffers from the same defect as the SCN, i.e., it did not bear the signatures of the concerned authority i.e., the Superintendent, Ward 94.

(iv) Lastly, Rule 68 of the CGST Rules, 2017 [in short "2017 Rules"] required the respondent/revenue to issue a notice to the petitioners concerning the non-filing of returns for the period in issue, having regard to the fact that up until February 2019, the petitioners had been regularly filing its returns.

(iv)(a) The period during which the petitioners did not file their return, spans between February 2019 and November 2019. Therefore, before taking recourse to the draconian powers conferred on the respondents/revenue under Rule 22 of the 2017 Rules, notice under Rule 68 ought to have been issued, concerning the infraction in not filing returns for the aforementioned period.

4. In support of his submissions, it has also been indicated that the petitioners, although remiss, initially, in filing the returns for the period

spanning between February 2019 and November 2019, appear to have filed their returns, with late fee on 30.04.2021.

5. On the other hand, Mr R. Ramachandran, who appears on behalf of the respondents/revenue, submitted that the conduct of the petitioners is such that no relief should be granted to them by this Court.

5.1. In this context, Mr Ramachandran has emphasized the fact that returns for the continuous period of six months, were not filed by the petitioners and therefore, the SCN was issued regarding the cancellation of the registration.

5.2. Mr Ramachandran contends that the procedure, as prescribed under the 2017 Rules, was adhered to, and therefore, no fault can be found with the action taken by the respondents/revenue of cancelling the petitioner's registration.

5.3. As regards the Order-in-Appeal, Mr Ramachandran contends that the period of non-filing the returns being prior to Covid-19 kicking in, the orders passed by the Supreme Court in *Suo Motu* Writ Petition No.3/2020, will not be applicable in the petitioners' case.

6. We have heard learned counsel for the parties at some length. According to us, the crucial dates for determining the limitation are the following:

6.1. The impugned order cancelling the registration is dated 25.11.2019. For the moment, we would assume that this order was served on the petitioners on the date when it was issued, though that is highly unlikely.

6.2. Concededly, the period of limitation prescribed for filing the appeal under Section 107 of the CGST Act, 2017 [in short "Act"] is three months, which is amenable to extension by the period of one month by the

Commissioner on sufficient cause being shown. (See sub-section (4) of Section 107 of the Act.)

6.3. The prescribed period of limitation would thus, end on 24.02.2020, with a one-month leeway available to the Commissioner to extend the period of limitation. The condonable period of one month, in this instance, would end on 24.03.2020.

6.4. It is common knowledge that Covid-19 restrictions were triggered in this country in and about 23.03.2020. Therefore, what needs to be examined is: whether or not the petitioners were covered by the orders and directions issued by the Supreme Court in *Suo Motu* Writ Petition (Civil) No.3/2020, to which, reference has been made hereinabove.

7. In this context, it may be relevant to refer to the following extracts from various orders passed by the Supreme Court:

> *"**Order dated 23.03.2020 in Writ Petition (Civil) No.3/2020***
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> *....To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court,* ***it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings****. ..."*
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> ***"Order dated 08.03.2021 in Writ Petition (Civil) No.3/2020***
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> *....The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881* ***and any other laws, which prescribe period(s) of limitation for***

instituting proceedings, outer limits (within which the court or tribunal can condone delay) *and termination of proceedings. ...”*

“Order dated 04.01.2022 in SLP(C)No.17298/2021

....Even as held by this Court in the subsequent orders even the period of limitation which could have been extended ***and/or condoned by the Tribunal/Court is excluded and/or extended even up to 07.10.2021****. ...”*

“Order dated 10.01.2022 Writ Petition (Civil) No.3/2020

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(IV) It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b)(and (c) of Section 138 of the Negotiable Instruments Act, 1881 ***and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay)*** *and termination of proceedings.”*

[Emphasis is ours.]

8. Having regard to the directions contained in the aforementioned orders, it is clear that extension of limitation applied even to the condonable period, and not just to the prescribed period of limitation under Section 107 of the Act.

8.1 Therefore, clearly, the impugned Order-in-Appeal dated 28.06.2021 is contrary to the directions issued by the Supreme Court, and therefore, deserves to be set aside.

9. On merits, as noted above, several assertions have been made by the

petitioners, including the assertions which tantamount to stating that there has been a violation of principles of natural justice, inasmuch as the SCN did not indicate the venue or the mode by which the authorized representative of the petitioners was to be heard in defence of their case.

9.1. The reason that we advert to the mode is that, in many cases which have come up before us, recourse has been taken to video-conferencing mechanism.

10. Insofar as the other argument that, both the SCN dated 29.10.2019, as well as the order cancelling the registration dated 25.11.2019, did not bear the signatures of the officer, Mr Ramachandran says that since these orders were to be uploaded on the Common portal, signatures were not appended by the officers.

10.1. In support of his submission that signatures need not be appended by the concerned officer, Mr Ramachandran relies upon Section 169(1)(d) of the Act. For the sake of convenience, the same is extracted hereafter:

> *"**169. Service of notice in certain circumstances***
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> *(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—*
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> *(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*
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> *(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his*

authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice."

[Emphasis is ours]

10.2. According to us, even a plain reading of the provision does not suggest that the orders need not be signed. At the least, the respondents/revenue should have appended digital signatures on the SCN and the above-mentioned order, as it has grave implications for the assessee.

11. However, this and the other aspects, on merits, are matters on which the concerned officer will return a finding, after hearing the authorized representative of the petitioners.

11.1. Accordingly, the impugned Order-in-Appeal dated 28.06.2021 is set aside.

11.2. Consequently, the appeal preferred by the petitioners is restored.

11.3. The authorized representatives of petitioner will have the liberty to

canvass their case before the concerned officer, who shall issue notice of hearing, in writing to the petitioner.

11.4. The notice will indicate the date, time, venue and the mode of hearing, i.e., whether it would be held virtually or in physical mode.

12. The writ petition is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 21, 2022/aj

Click here to check corrigendum, if any