

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P(C). No.17425 of 2022

The Flora, Bhubaneswar

....

Petitioner

Mr. S. Dwibedi, Advocate
Mr. S. Das, Advocate

-versus-

Union of India & Others

....

Opposite Parties

Mr. Radhe Shayam Chimanka, Sr. Advocate
for CGST

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER
12.08.2022

Order No.

- 01.**
1. This matter is taken up by virtual/physical mode.
 2. The writ petition is directed against the order dated 29th July, 2021 passed by the Additional Commissioner, GST (Appeals), Bhubaneswar, whereby the appeal preferred by the Petitioner has been rejected on the ground that the appeal was presented beyond the statutory period prescribed under Section 107(1) of the Central Goods and Services Tax Act, 2017 (in short, "CGST Act"). The grievance of the Petitioner in a nutshell is that it has preferred appeal against the order of cancellation of registration which was not entertained by the Appellate Authority-Additional Commissioner, GST (Appeal) under the CGST Act on the ground of limitation without taking cognizance of Order dated 23rd September, 2021 of Hon'ble Supreme Court passed in connection with surge of COVID-19 virus pandemic during the relevant period.

3. Mr. S. Dwibedi, counsel for the Petitioner has explained with a reference to dates and events that the delay should have been ignored by the Appellate Authority.

For better appreciation the date and particulars as referred to by the petitioner is extracted hereunder:-

“

<i>Date</i>	<i>Particulars</i>	<i>Legal Backing</i>
05.12.2019	Communication of order of cancellation of registration	
04.03.2020	Last date of normal period of limitation for filing of the appeal	Under Section 107(1) of the Act
04.04.2020	Last date of condonable period of limitation under Section 107(4) of the Act.	Under Section 107(4) of the Act.
20.03.2020	Hon'ble Supreme Court extended the period of limitation from 15.03.2020 till further orders.	Suo Motu Writ Petition (civil) No.(S).3/2020
08.03.2021	Hon'ble Supreme Court has opined that the order dated 23.03.2020 has served its purpose; the extension of limitation should come to an end. Accordingly from 15.03.2020 to 14.03.2021 shall be excluded for the period of limitation	Suo Motu Writ Petition (civil) No.(S).3/2020
27.04.2021	The Hon'ble Surpeme	M.A. No. 665 of 2021

	<i>Court restore the order dated 23.03.2020 and in continuation of the order dated 08.03.2021 directed the period of limitation shall stand extended till further orders.</i>	<i>in S.M.W.(C) No.3/2020/</i>
<i>13.04.2021</i>	<i>Appeal petition filed in APL 01 by the Petitioner</i>	<i>The last date for filing the appeal petition was including condonable period of one month. The period from 15.03.2020 to 02.10.2021 stands excluded for the purpose of limitation as per the order dated 23.09.2021 by the Hon'ble Supreme Court.</i>
<i>23.09.2021</i>	<i>Hon'ble Supreme Court directed for computing the period of limitation, the period from 15.03.2020 till 02.10.2021 shall be excluded.</i>	<i>M.A. No. 665/2021 in S.M.W. (C) No. 3/2020."</i>

4. Mr. S. Dwibedi, counsel for the Petitioner relied on the Order dated 23rd September, 2021 of the Hon'ble Supreme Court passed in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020 (IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION)*. Para 8 of the said order is extracted hereunder:-

“Therefore, we dispose of the M.A. No.665 of 2021 with the following directions:-

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

*III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation 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.***

IV. The Government of India shall amend the guidelines for containment zones, to State.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

[Emphasis supplied]

The counsel for the Petitioner, therefore, submitted that, since the last date for filing of appeal fell on 4th April, 2020 aforesaid order of the Hon'ble Supreme Court of India which specifically indicated that for computation of limitation for institution of proceedings the period from 15th March, 2020 to 2nd

October, 2021 would stand excluded, the order of the Appellate Authority rejecting the appeal cannot be held to be sustained.

5. Mr. Radhe Shyam Chimanka, Senior Standing Counsel for CT & GST Organization has conceded to the aforesaid position as put forth by the Petitioner and has raised no serious objection.

6. This Court, having the opportunity to peruse the Order dated 23rd September, 2021 of the Hon'ble Supreme Court, finds that the said Court in no ambiguous terms specified that the period from 15th March, 2020 to 2nd October, 2021 stands excluded for the purpose of computing the periods prescribed under any law which "prescribes period(s) of limitation for instituting proceedings" and "outer limits (within which the Court or Tribunal can condone delay)". It is undisputed fact on record that as the petitioner has received the order of cancellation of registration on 5th December, 2019, the last date for filing of appeal was 4th April, 2020 but the appeal being filed on 13th April, 2021, the appeal should have been treated as filed within the period of limitation in view of Category-III specified in the Order dated 23.09.2021 of the Hon'ble Apex Court. The Additional Commissioner, GST (Appeal) conspicuously ignored to keep in view the purport of said Order. Therefore, there is warrant for intervention in the appellate order under challenge in the writ petition.

7. Accordingly, the impugned Appellate Order dated 29th July, 2021 is hereby set aside and the appeal is restored to file. The Appellate Authority may proceed with the appeal for hearing after giving opportunity of hearing to the Petitioner in accordance with

Citation no. 2022 (8) GSTPanacea 168 HC Orissa

law and decide the case on merits, unless the appeal is free from other defects and subject to compliance of statutory requirements.

8. The writ petition stands disposed of in the light of above observation and direction.

Issue urgent certified copy as per rules.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge

Laxmikant

August 12th, 2022
Cuttack

