

AFR



HIGH COURT OF CHHATTISGARH BILASPUR

WA No. 104 of 2021

Nandan Steels And Power Limited A Company Incorporated Under The Companies Act, 1956, Having Its Office At Sondra, Behsar Road, Siltara Industrial Area, Block Dharsiwa, District Raipur, Chhattisgarh, Through Its Director Manish Kumar Agrawal, Son of Subhash Kumar Agrawal, Aged About 51 Years.

---- Appellant

Versus

1. State of Chhattisgarh Through The Secretary, Department of Commercial Tax, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, Naya Raipur, District Raipur (Chhattisgarh)
2. The Commissioner State Goods And Service Tax Department, Civil Lines, Raipur (Chhattisgarh)
3. The Joint Commissioner (Appeals) State Goods And Service Tax, Civil Lines, Raipur (Chhattisgarh)
4. The Adjudicating Authority (Assistant Commissioner) State Goods And Service Tax, Civil Lines, Raipur (Chhattisgarh)

---- Respondents

For Appellant : Mr. Prateek Pandey, Advocate

For Respondents : Mr. Vikram Sharma, Deputy Govt. Advocate

Date of hearing : 19.07.2022

Date of Judgment : 10.08.2022

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C A V Judgment

Per Arup Kumar Goswami, Chief Justice

Heard Mr. Prateek Pandey, learned counsel for the appellant.

Also heard Mr. Vikram Sharma, learned Deputy Government Advocate, appearing for the respondents.



2. This appeal is presented against an order dated 27.10.2020 passed by the learned Single Judge in Writ Petition (T) No.97 of 2020, dismissing the writ petition.

3. The appellant is a Private Limited Company incorporated under the provisions of the Companies Act, 1956 and engaged in the business of manufacturing iron and steel products. The appellant had filed TRAN-1 to claim CGST input credit of Rs.30,74,436/-. However, the Adjudicating Authority by an order dated 26.06.2019 had disallowed the CGST input credit of Rs.25,33,950/-.

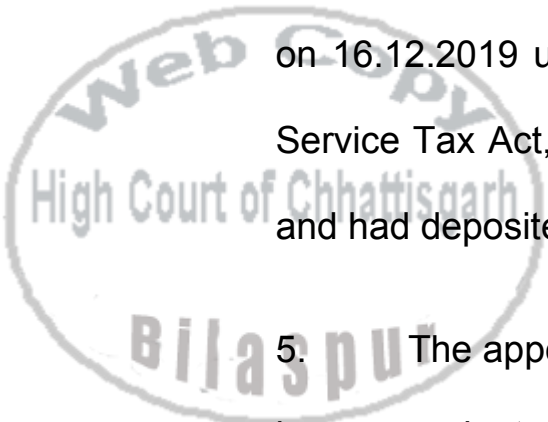
4. Against the aforesaid order, the appellant preferred an appeal on 16.12.2019 under Section 107 (1) of the Chhattisgarh Goods and Service Tax Act, 2017 (for short, 'CGST Act') before respondent No.3 and had deposited 10% of the amount in dispute.

5. The appeal was rejected by an order dated 20.12.2019 passed by respondent No.3 on the ground of the same being barred by limitation.

6. Writ petition was filed assailing the said order dated 20.12.2019 passed by respondent No.3 with a further prayer to direct the respondent No.3 to hear the appeal preferred by the appellant on merits.

7. It will be appropriate to extract relevant provisions of Section 107 of the CGST Act :

“107. Appeals to Appellate Authority.-(1) Any person aggrieved by any decision or order passed

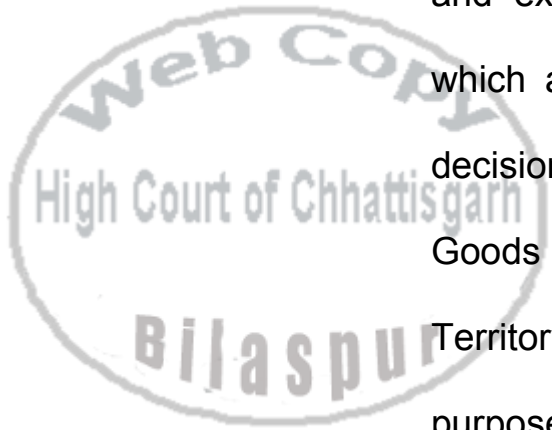




under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, 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 subsection (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.



| | | | |
|---|---|---|---|
| x | x | x | |
| x | x | x | ” |

8. The learned Single Judge held that in terms of Sections 107 (1) and 107 (4) of the CGST Act, the Appellate Authority has no power to entertain an appeal beyond the period of one month as stipulated in Section 107 (4) and the Appellate Authority becomes *functus officio*. It is also held that there is no power to entertain the application for condonation of delay beyond the permissible period provided under the CGST Act.

9. Mr. Prateek Pandey, learned counsel for the appellant submits that delay that had occasioned was on account of the fact that the



Chartered Accountant, who was authorised by the appellant to prefer an appeal, had suffered serious ailment, and therefore, an application for condonation of delay had been filed. In such circumstance, respondent No. 3 ought to have considered the application for condonation of delay. He has drawn our attention to Section 29(2) of the Limitation Act, 1963 (for short, 'Limitation Act') and submits that there being no express exclusion of provisions contained in Sections 4 to 24 of Limitation Act under the CGST Act, respondent No.3 had power to condone the delay on satisfaction being arrived at that there was sufficient cause for the delay.

10. Mr. Vikram Sharma, learned Deputy Government Advocate, appearing for the respondents, submits that the CGST Act is a special law and same is a complete code by itself and the relevant provisions make it abundant clear that the provisions of Limitation Act are necessarily excluded, and therefore, the submission of Mr. Pandey that there is power to condone delay even beyond the period prescribed is entirely misplaced. He relies on the judgments of the Hon'ble Supreme Court in the cases of *Patel Brothers v. State of Assam*, reported in (2017) 2 SCC 350, *P. Radha Bai and Others v. P. Ashok Kumar and Another*, reported in (2019) 13 SCC 445 and *Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and Others*, reported in (2008) 3 SCC 70.

11. We have considered the submissions of learned counsel for the parties and have perused the materials on record.

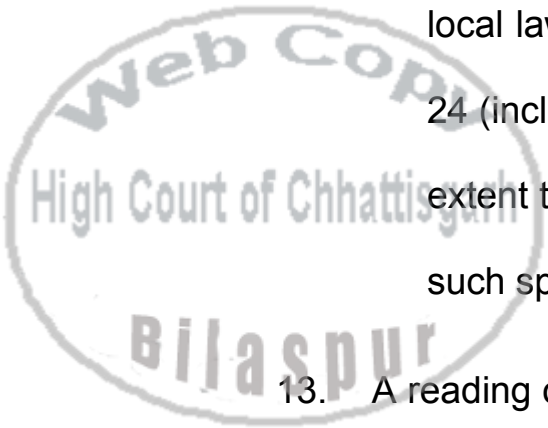


12. It will be appropriate to take note of Section 29(2) of the Limitation Act, which reads as follows:

“29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.”

13. A reading of Section 29(2) would go to show that the section is divided into two parts, manifested by the expression “and”. The first part stipulates that the limitation period prescribed by the special law or local law will prevail over the limitation period prescribed in the Schedule to the Limitation Act. The second part of Section 29(2) of the Limitation Act ordains that the Sections 4 to 24 of the Limitation Act will apply for determining the period of limitation “only insofar as, and to the extent which, they are not expressly excluded by such special or local law.”(emphasis given)

14. CGST Act is a “special law” which prescribes a specific period of limitation in Sections 107(1) and 107(4), and therefore,

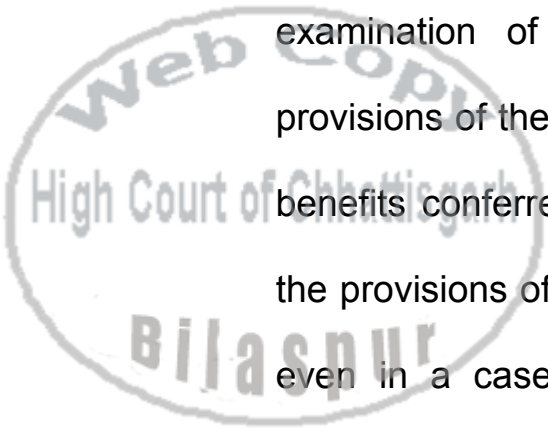




the provisions of CGST Act will apply. It is also to be noted that there is no provision under the Limitation Act dealing with the subject matter of appeal under the CGST Act.

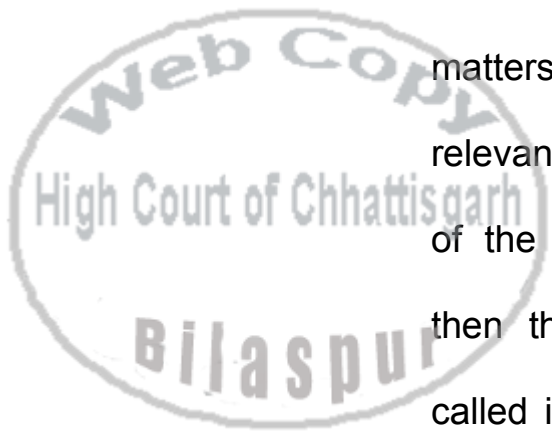
15. In the case of *Hukumdev Narain Yadav v. Lalit Narain Mishra*, reported in *(1974) 2 SCC 133*, the Hon'ble Supreme Court had observed that in the context of a special law it will be necessary to examine whether the scheme of special law and the nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the various matters provided by it and if on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act in question. Accordingly, it was held that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of subject matter and scheme of the special law exclude their operation.

16. The aforesaid principle was reiterated by the Hon'ble Supreme Court in the case of *Commissioner of Customs and Central Excise v. Hongo India Private Limited & Another*, reported in *(2009) 5 SCC 791*. At paragraph 35, it was observed as follows:





“It was contended before us that the words “expressly excluded” would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from





the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.”

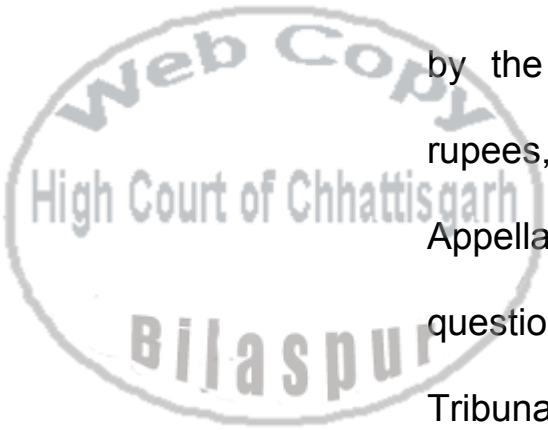
17. The principle enunciated was reiterated by the Hon'ble Supreme Court in the cases of *Union of India v. Popular Construction Co.*, reported in (2001) 8 SCC 470, *Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & Others*, reported in (2010) 5 SCC 23, *Gopal Sardar v. Karuna Sardar*, reported in (2004) 4 SCC 252 and *P. Radha Bai & Others* (supra). Therefore, the submission of Mr. Pandey that in view of there being no express provision in CGST Act excluding applicability of the Limitation Act, necessarily it has to be held that the Limitation Act applies, is without any merit. However, it will be necessary for us to examine as to whether the Legislature intended CGST Act to be a complete code by itself, which alone should govern the matters falling within the ambit of the CGST Act.

18. In the case of *Hongo India* (supra), the Hon'ble Supreme Court had occasion to consider Section 35-H(1) of the Central Excise Act, 1944, for short, C.E. Act. The question that had fallen for consideration before the Hon'ble Supreme Court was whether the High Court has power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the C.E. Act beyond the prescribed period by applying Section 5 of the Limitation Act. Section 35-H(1) of the C.E. Act as considered by the Hon'ble Supreme Court, reads as follows:



“35H. Application to High Court - (1) The Commissioner of Central Excise or the other party may, within one hundred and eighty days of the date upon which he is served with notice of an order under Section 35-C passed before the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, apply to the High Court to direct the Appellate Tribunal to refer to the High Court any question of law arising from such order of the Tribunal.”

19. Unamended Section 35-H of the C.E. Act dealt with reference application to the High Court. Under sub-section (1) thereof, such reference application could be preferred within a period of 180 days of the date upon which the aggrieved party is served with notice of an order under Section 35-C of the C.E. Act. There was no provision to extend the period of limitation for filing the application to the High Court beyond the said period and to condone the delay. Pertinently, under the scheme of the C.E. Act itself, in case of appeal to the Commissioner under Section 35 of the Act, which should be filed within 60 days, there was a specific





provision for condonation of delay upto 30 days if sufficient cause is shown. Likewise, appeal to the Appellate Tribunal could be filed within 90 days under Section 35-B thereof and sub-section (5) of Section 35-B gave power to the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Further, Section 35-EE provided 90 days time for filing revision by the Central Government and proviso thereto empowers the revisional authority to condone the delay for a further period of 90 days. However, when it came to making reference to the High Court under Section 35-G of the Act, the provision only prescribed the limitation period of 180 days with no further clause empowering the High Court to condone the delay beyond the said period of 180 days.

20. On due consideration of the scheme of the C.E. Act, the Hon'ble Supreme Court concluded that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a Court under Section 5 of the Limitation Act. It was also observed that it is the duty of the Court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act.

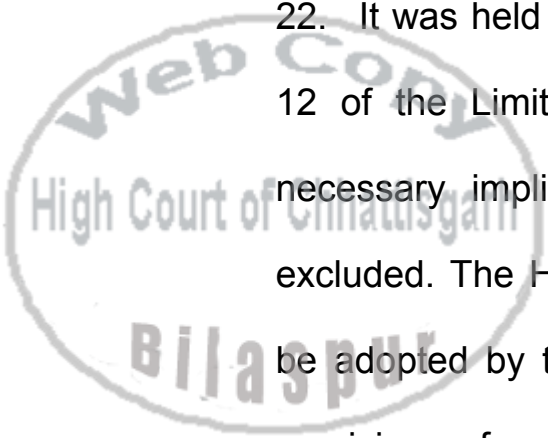
21. In *Patel Brothers* (supra), the question of law which had fallen for determination was as to whether provisions of Section 5 of the Limitation Act are applicable in respect of the revision petition filed in the High Court under Section 81 of the Assam Value Added Tax Act, 2003 (for short, 'the VAT Act'). Section 81



of the VAT Act, as considered by the Hon'ble Supreme Court, reads as follows:

“81. Revision to High Court : (1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court, and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings.”

22. It was held by the High Court that since only Sections 4 and 12 of the Limitation Act are made specifically applicable, by necessary implication, Section 5 of the Limitation Act stood excluded. The Hon'ble Supreme Court held that the approach to be adopted by the High Court in such cases is to examine the provisions of special law to arrive at a conclusion as to whether there was legislative intent to exclude the operation of Limitation Act. As Section 84 of the VAT Act made only Sections 4 and 12 of the Limitation Act applicable to the proceedings under the VAT Act, it was held by the Hon'ble Supreme Court that the apparent legislative intent, which can be clearly evinced, is to exclude other provisions, including Section 5 of the Limitation Act. It was observed that if the intention of the legislature was to make Section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like Section 84 thereby





making only Sections 4 and 12 of the Limitation Act applicable to such proceedings, inasmuch as these two Sections would also have become applicable by virtue of Section 29(2) of the Limitation Act.

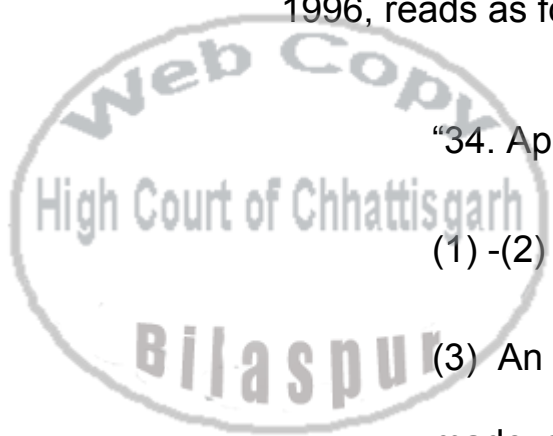
23. In *P. Radha Bai* (Supra), the inquiry conducted by the Hon'ble Supreme Court was whether the text or the scheme and object of the Arbitration and Conciliation Act, 1996 (for short, the Act of 1996) excludes the application of Section 17 of the Limitation Act while determining the limitation period as prescribed under Section 34(3) of the Act of 1996. Section 34(3) of the Act of 1996, reads as follows :

“34. Application for setting aside arbitral award-

(1) -(2) * * *

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application





within a further period of thirty days, but not thereafter.”

24. The Hon'ble Supreme Court observed that the limitation provision in Section 34(3) of the Act of 1996 also provides for condonation of delay. Unlike Section 5 of Limitation Act, the delay can only be condoned for 30 days on showing sufficient cause. The crucial phrase “but not thereafter” reveals the legislative intent to fix an outer boundary period for challenging an Award.

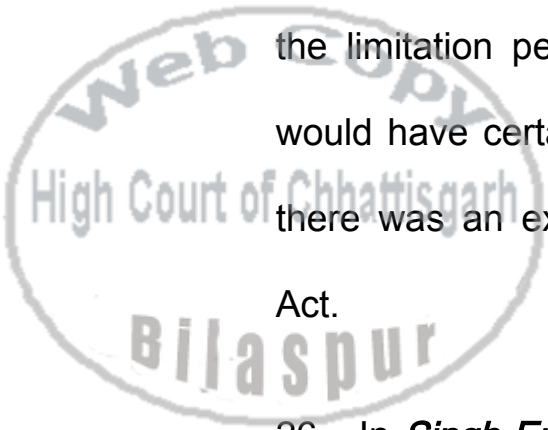
25. In that view of the matter and also taking note of the fact that if Section 17 of the Limitation Act were to be applied to determine the limitation period under Section 34(3) of the Act of 1996, it would have certain unwarranted inconsistencies, it was held that there was an express exclusion of Section 17 of the Limitation Act.

26. In *Singh Enterprises* (supra), Section 35 of the C.E. Act had fallen for consideration. Paragraphs 6 and 7 read as follows:

“6. At this juncture, it is relevant to take note of Section 35 of the Act which reads as follows:

“35. Appeals To Commissioner (Appeals.)

(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Commissioner of Central Excise, may appeal to the Commissioner of Central Excise





(Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)] within sixty days from the date of the communication to him of such decision or order :

Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.

(2) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

7. It is to be noted that the periods sixty days and thirty days have been substituted for within three months and three months by Act 14 of 2001, with effect from 11.5.2001.

27. It was observed by the Hon'ble Supreme Court that the Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation can be accepted is statutorily provided. 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 subsection (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 upto 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.”

29. In the case of *Assistant Commissioner (CT) LTU, Kakinada & Others v. Glaxo Smith Kline Consumer Health Care Limited*, reported in *AIR 2020 SC 2819*, Section 31 of the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'AP VAT Act') had fallen for consideration. The said provision reads as follows:

“Section 31. (1) Any VAT dealer or TOT dealer or any another dealer objecting to any order passed or proceeding recorded by any authority under the provisions of the Act other than an order passed

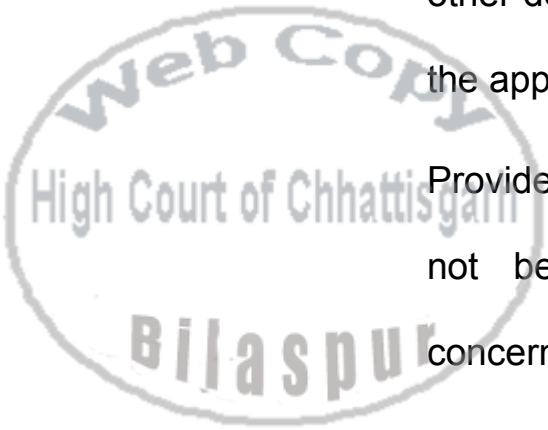


or proceeding recorded by an Additional Commissioner or Joint Commissioner or Deputy Commissioner, may within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed:

Provided that the appellate authority may within a further period of thirty days admit the appeal preferred after a period of thirty days if he is satisfied that the VAT dealer or TOT dealer or any other dealer had sufficient cause for not preferring the appeal within that period:

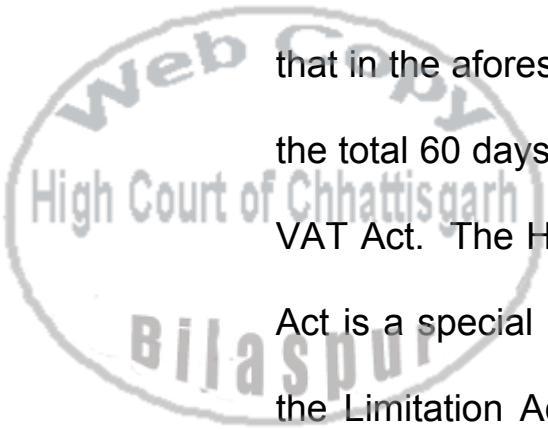
Provided further that an appeal so preferred shall not be admitted by the appellate authority concerned unless the dealer produces the proof of payment of tax, penalty, interest or any other amount admitted to be due, or of such, installments as have been granted, and the proof of payment of twelve and half percent of the difference of the tax, penalty, interest or any other amount, assessed by the authority prescribed and the tax, penalty, interest or any other amount admitted by the appellant, for the relevant tax period, in respect of which the appeal is preferred.

XXX XXX XXX”





30. It was observed by the Hon'ble Supreme Court that it is evident that the statutory appeal was required to be filed within 30 days from the date on which the order or proceeding was served on the assessee. If the appeal is filed after expiry of prescribed period, the appellate authority is empowered to condone the delay in filing the appeal, only if it is filed within a further period of not exceeding 30 days and sufficient cause for not preferring the appeal within prescribed time is made out. The appellate authority is not empowered to condone delay beyond the aggregate period of 60 days from the date of order or service of proceeding on the assessee, as the case may be. It is to be noted, at this juncture, that in the aforesaid case, admittedly, the appeal was filed beyond the total 60 days' period specified in terms of Section 31 of the AP VAT Act. The Hon'ble Supreme Court observed that the AP VAT Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has binding effect and the same has to be followed regard being had to its mandatory nature. It was also explained that the prescription of limitation in the case at hand, when the statute commands that the Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It was also observed that there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of





public policy. It is in that context, the Hon'ble Supreme Court observed that if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the AP VAT Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. The fact that High Court has wide powers, does not mean that it can issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the AP VAT Act as that would render the legislative scheme and intention behind the stated provision otiose.

31. In the context of the present case, it would also be relevant to take note of Sections 117(1) and (2) of the CGST Act, which read as follows:

“(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

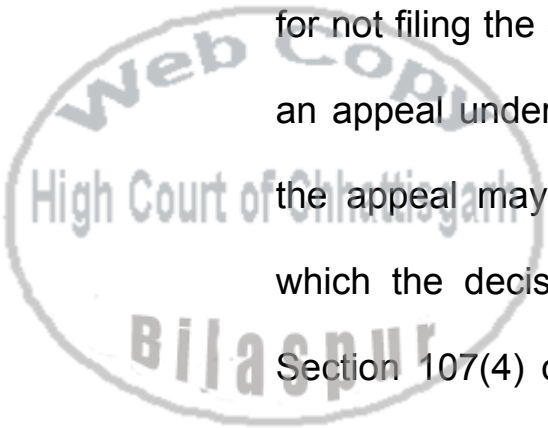
(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and



it shall be in such form, verified in such manner
as may be prescribed:

Provided that the High Court may entertain an
appeal after the expiry of the said period if it is
satisfied that there was sufficient cause for not
filing it within such period.”

32. A perusal of the above Sections go to show that in respect of
an appeal to the High Court, the Legislature has not provided any
specific time limit for entertainment of an appeal after expiry of the
period of limitation if it is satisfied that there was sufficient cause
for not filing the same within the period of limitation. In respect of
an appeal under Section 107(1) of CGST Act, it is provided that
the appeal may be filed within three months from the date on
which the decision or order is communicated to such person.
Section 107(4) of CGST Act lays down that on sufficient cause
being shown, the Appellate Authority may allow the appeal to be
presented within a further period of one month. The same would
go to show that the legislative intent was not to apply the
Limitation Act in the proceedings to be taken under the CGST Act.
If the intention had been otherwise, there would have been no
occasion for conferring specifically power to the High Court to
entertain an appeal after the expiry of the period of limitation of
180 days if it was satisfied that there was sufficient cause for not
filing it within such period as Section 5 of the Limitation Act would
have become applicable by virtue of Section 29(2) of the





Limitation Act. Absence of the words 'but not thereafter' as appearing in the Act of 1996 is of no moment. It is to be noted that the words 'but not thereafter' were also absent in the provisions which had fallen for consideration of the Hon'ble Supreme Court in *Hongo India* (supra), *Assistant Commissioner (CT) LTU, Kakinada & Others* (supra) and *Singh Enterprises* (supra),

33. In view of the above discussion, we find no merit in this appeal and accordingly, the writ appeal is dismissed.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

