

Court No. - 3**Case :-** WRIT TAX No. - 151 of 2023**Petitioner :-** M/S Santosh Traders Thru. Proprietor Santosh Kumar**Respondent :-** State Of U.P. Thru. Prin. Secy. Tax And Registration Lko. And 2 Others**Counsel for Petitioner :-** Sachin Srivastava**Counsel for Respondent :-** C.S.C.**Hon'ble Syed Qamar Hasan Rizvi,J.**

1. Heard Shri Sachin Srivastava, learned counsel for the petitioner, Shri Har Govind Singh, learned Additional Chief Standing Counsel for the State-opposite parties and perused the record.
2. The present petition has been filed challenging the order dated 26.12.2022 passed by the Additional Commissioner, Grade-2 (Appeal), State Tax, Gonda, U.P. (Opposite Party No.2) under Section 107(11) of the Central Goods and Services Tax/U.P. Goods and Services Tax (hereinafter referred to as 'the CGST/SGST) in ARN No.AD0907220271457/2022 dismissing the appeal filed by the petitioner and also the impugned order dated 14.07.2021 passed by the Deputy Commissioner, CommercialTax/GST, Khand-4, Gonda, U.P. (Opposite Party No.3) passed under Section 74 (9) of the C.G.S.T./S.G.S.T.
3. The contention of the learned counsel for the petitioner is that the petitioner is a proprietor engaged in the business of supplying interlocking bricks, cement and construction materials and is registered with the Goods and Services Tax (GST) Authorities in the State of U.P.
4. On 20.05.2020, the opposite party no.3 i.e. Deputy Commissioner, Commercial Tax/GST, Khand-4, Gonda, U.P. issued a show-cause notice under Section 61 of the CGST/SGST in the FORM of GST, ASMT-10 by means of which, demand of GST on a total receipt of amount of Rs.1,10,67,891/- (One Crore Ten Lakh Sixty Seven Thousand Eight Hundred Ninety One Rupees) was made.
5. The contention of the learned counsel for the petitioner is that the said total amount received by the petitioner's firm includes taxable amount and GST which has already been deposited through FORM GSTR-3B.

6. The case of the petitioner is that due to the outbreak of COVID-19 Pandemic in the year 2020-21, the office of Auditor/Staff of the petitioner's firm was not working in routine manner and on account of this reason, the petitioner could not receive the said notice nor did he reply to it. However, in pursuance of the aforesaid notice, the opposite party no.3 (Deputy Commissioner, Commercial Tax/GST, Khand-4, Gonda) under Section 74 (9) of the CGST/SGST Act passed an ex-parte order dated 14.07.2021 whereby set apart the tax already deposited by the petitioner through FORM GSTR-3B and demanded a fresh 18% GST on the total receipt amount of Rs.1,10,67,891/- (One Crore Ten Lakh Sixty Seven Thousand Eight Hundred Ninety One Rupees) along with the interest and penalty. The petitioner, on 19.07.2022, preferred an appeal under Section 107 (1) of the CGST/SGST Act against the order dated 14.07.2021 but the opposite party no.2 (Additional Commissioner, Grade-2 (Appeal), State Tax, Gonda, U.P.) dismissed the said appeal vide order dated 26.12.2022 on the ground that the same was filed beyond the period of limitation.

7. The learned counsel for the petitioner for justification to the delay in filing the aforesaid appeal has submitted that the petitioner fell seriously ill for which he was continuously under medical treatment from 05.02.2021 to 19.07.2022 for his acute illness, namely Pott's Spine (Spinal Tuberculosis). He has also annexed the photocopy of the medical/fitness certificate dated 19.07.2022 issued by the District T.B. and Chest Centre, District Hospital Campus, Gonda as Annexure No.5 to the present writ petition. He further submits that immediately after recovery, on 19.07.2022, the petitioner preferred the aforesaid appeal under Section 107(1) of the CGST/SGST Act challenging the order dated 14.07.2021 but the opposite party no.2 (Additional Commissioner, Grade-2 (Appeal), State Tax, Gonda, U.P.) without taking into consideration the bona fide delay in filing the appeal has dismissed the appeal vide order dated 26.12.2022.

8. The contention of the learned counsel for the petitioner is that the inability on the part of the petitioner to prefer the aforesaid appeal within the prescribed period was due to some bona fide reasons, unavoidable circumstances and sufficient cause for delay.

9. It has further been argued that as per the provisions of Section 112 of the SGST Act, the petitioner has statutory remedy to challenge the impugned order dated 26.12.2022 before the Appellate Tribunal and under the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2009, the limitation to file an appeal has not been expired.

10. In support of his aforesaid contentions, learned counsel for the petitioner has relied upon the following judgments and orders:

(i) Writ Tax No.822 of 2018, 'M/s Central Industrial Security Force, FGUTPP Unit Versus Commissioner of Central Goods and Services Excise and Others'.

(ii) Writ Tax No.42 of 2019, 'M/s Raj Enterprises and Another Versus Additional Commissioner, Aligarh and Another'.

(iii) Writ Tax No.1224 of 2022, 'M/s Eastern Machine Bricks and Tiles Industries Private Limited Versus State of U.P. and Others'

(iv) Writ Tax No.265 of 2023, 'M/s Jambudwip Exports and Imports Ltd. Versus State of U.P. and Another'.

11. Having heard learned counsel for the petitioner, learned Additional Chief Standing Counsel for the State-Opposite Parties and perused the order passed by the First Appellate Authority.

12. Admittedly, the appeal was filed beyond time, however, in the peculiar set of facts and circumstances, the reason for delay prima facie, appears to be bona fide.

13. Learned Additional Chief Standing Counsel appearing on behalf of the State-Opposite Parties submits that he has no objection only to the extent that in case, the petitioner is granted liberty to approach the Appellate Authority by moving an appropriate application before the same for the adjudication of the matter on merits.

14. Considering the submissions of the learned counsel for the petitioner and decisions cited, the impugned order dated 26.12.2022 passed by the Appellate Authority is set aside and the matter is remanded to the Appellate Authority (opposite party no.1) with a direction to consider and adjudicate upon the appeal filed by the petitioner on merits without raising any objection on the limitation, after giving notice and opportunity of hearing to all concerned. It is however, provided that if in the event, such appeal is filed within a period of two weeks from today, the same shall be entertained and decided on merits and shall be dealt with perfectly in accordance with law.

15. The learned counsel for the petitioner undertakes that the petitioner shall not seek any adjournment before the aforesaid Appellate Authority except under the unavoidable

circumstances.

16. This order has been passed in the peculiar set of facts of the present case.

17. Further, it is made clear that this order has been passed by the Court without entering into the merits of the case.

18. Accordingly, the present petition is **party allowed**.

Order Date :- 19.6.2023

V. Sinha