



Court No. - 8

Case :- WRIT TAX No. - 96 of 2023

Petitioner :- Shri Ram Ply Product Thru. Its Partner Shri Arun Kumar Jindal

Respondent :- Addl. Commissioner Grade 2 Appeal State Tax Sitapur And 2 Others

Counsel for Petitioner :- Alok Singh

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh,J.

1. Heard Mr. Suyash Agarwal along with Mr. Alok Singh, Advocates for the petitioner, as well as Mr. Sanjay Shareen, learned Additional Chief Standing Counsel, for respondents-State Authorities.

2. This petition under Article 226 of the Constitution of India has been filed, seeking setting-aside of the order dated 27.02.2023 passed by the Additional Commissioner Grade-2 (Appeal) Sitapur in Appeal No.112 of 2022 for the year 2021-22 (tax period October and November 2021) (Annexure-7) .

3. Vide the impugned order the appeal instituted by the petitioner was dismissed on the ground that it was beyond maximum period, as prescribed under the statute i.e. four months. The prescribed authority had confirmed the demand of Rs. 49.74 Lakhs vide order dated 07.06.2022. The appellate authority has computed four months as each month would be of 30 days.

4. Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 (for short "Act, 2017") provides that an appeal, against any decision or order passed under this Act or the State Goods and Services Tax Act by the adjudicating authority, may be filed before appellate authority within the prescribed period of three months from the date on which the said order is communicated to the person concerned. Sub-Section (4) of Section 107 of the Act, 2017 provides that the appellate authority may, if it is satisfied that the appeal was prevented by sufficient cause from presenting it within the period of three months, may allow it to be presented within a further period of one month.

5. Bare reading of the provisions of Section 107 of the Act, 2017 reflects that it is not 120 days, but it is four months and, therefore, it would depend upon the date on which date the adjudicating authority passes the order. The four months may be of 121 days or 122 days, as the case may be. In the present case, in four months, around 121 days come, and the appeal was filed on 121st day. The appellate authority should have entered into the merit of the application whether it disclosed sufficient cause for not filing the appeal within the period of three months instead of entering into merit of the application to find out whether the appellant, petitioner herein had sufficient cause which preventing him from presenting the appeal within a period of three months, the appeal has been summarily dismissed only on the ground that it was beyond 120 days, and not within 120 days.

6. Mr. Sanjay Shareen, learned Additional Chief Standing Counsel, does not dispute either legal position or the factual position.

7. In view thereof, the appeal is restored to its original number, and the appellate Authority is directed to proceed with the appeal, and decide the same on merit, expeditiously, in accordance with law.

8. The petition is ***allowed***, and the impugned order is ***quashed***.

[D.K. SINGH, J.]

Order Date :- 21.4.2023

MVS/-