

**A.F.R.**

Neutral Citation No. - 2024: AHC:89577

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

Court No. - 1

**WRIT TAX No. - 1614 of 2022**

M/S BALAJI COAL TRADERS

v.

COMMISSIONER, COMMERCIAL TAX, LUCKNOW AND OTHERS

**Counsel for Petitioner** : Ms. Pooja Talwar, Advocate

**Counsel for Respondent** : Mr. Arvind Kumar Mishra, Standing Counsel

**HON'BLE SHEKHAR B. SARAF, J.**

1. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated April 19, 2022 passed by the Assistant Commissioner, State Tax, Sector -7, Agra (hereinafter referred to as the 'Respondent No. 2'), order dated July 12, 2022 passed by the Assistant Commissioner, State Tax, Sector – 5, Agra (hereinafter referred to as the 'Respondent No. 3'), and the order dated November 24, 2022 passed by the first appellate authority. Vide order dated November 24, 2022, the appeal filed by the Petitioner was dismissed as time barred.

2. Facts of the instant case are briefly delineated below:

- (a) Petitioner was granted registration certificate under the U.P. Goods and Services Tax Act, 2017 (hereinafter referred to as the UPGST Act').
- (b) The aforesaid registration of the petitioner was cancelled by the Respondent No. 2 vide impugned order dated April 19, 2022.
- (c) Thereafter, the Petitioner had filed an application for revocation of the cancellation of registration before the Respondent No. 3 which was rejected vide impugned order dated July 12, 2022.

(d) Aggrieved by the impugned order dated July 12, 2022 the Petitioner had filed an appeal under Section 107 of the UPGST Act. The first appellate authority vide order dated November 24, 2022 dismissed the said appeal as time barred. Relevant portions of the impugned order dated November 24, 2022 are extracted herein below:

"अपीलार्थी द्वारा दिनांक 12.07.22 को आदेश की प्राप्ति स्वीकार करते हुए दिनांक 10.11.2022 को अपील योजित की गयी है। उ० प्र० जी०एस०टी० एवं सी०जी०एस०टी० की धारा 107(1) के अन्तर्गत आदेश तामीली के 03 माह (90 दिन) के अन्तर्गत प्रथम अपील योजित करने की व्यवस्था है तथा धारा 107(4) के अन्तर्गत 01 माह के विलम्ब को क्षमा करने का अधिकार प्रथम अपीलीय अधिकारी को दिया गया है, इस प्रकार 04 माह (120 दिन) के भीतर तक अपील प्रस्तुत की जा सकती है, जबकि प्रश्नगत अपील निर्धारित समय(विलम्ब क्षमा सहित) से लगभग 01 दिन बाद दाखिल की गयी है। इस प्रकार अधिनियम के अंतर्गत निर्धारित समय के बाद अपील दायर की गयी है। उक्त कमी के बिन्दु पर अपीलकर्ता ने बताया कि कोयला व्यापारी संघ को जी०एस०टी० में परेशानी का सामना करना पड़ रहा है, जिससे उ० प्र० प्रदूषण बोर्ड को भी अवगत कराया गया है, परन्तु मामला अभी लंबित होने कारण वे समय पर अपील दाखिल नहीं कर सके थे।...

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... प्रमाणित है कि उ० प्र० जी०एस०टी० एवं सी०जी०एस०टी० की धारा 107(1) तथा 107(4) के अनुसार प्राविधानित समय सीमा में अपील दायर नहीं की गयी है। जहां तक विलम्ब क्षमा का प्रश्न है, माननीय सर्वोच्च न्यायालय द्वारा मै० सिम्प्लैक्स इम्फ्रास्ट्रक्चर लि० बनाम यूनियन ऑफ इण्डिया (सिविल अपील सं० 11866/2018) (स्पेशल लीव पिटीशन नं० 17521/2017) जो कि आर्विटेसन एण्ड कॉन्सिलिएशन एक्ट से सम्बन्धित था, में स्पष्ट निर्णय दिया गया है कि उक्त एक्ट के Express provisias को देखते हुए विलम्ब क्षमा नहीं किया जा सकता है। उक्त एक्ट के प्राविधानों के अनुरूप सी०जी०एस०टी०/उ० प्र० जी०एस०टी० एक्ट की धारा 107(1) के अनुसार अपील आदेश प्राप्ति के 03 माह के अन्दर दाखिल की जानी चाहिये तथा धारा 107(4) के अनुसार अपील प्राधिकारी को यह समाधान हो जाता है कि अपीलकर्ता 03 माह की पूर्वाक्त अवधि के भीतर अपील करने के पर्याप्त कारणों से निवारित किया गया था तो वह उसे 01 माह की अवधि के भीतर प्रस्तुत करना अनुज्ञात करेगा। उक्त से यह स्पष्ट है कि नियत अवधि 03 माह के आगे अधिकतम 01 माह का अतिरिक्त समय का Extention दिये जाने का ही Statutory mandate है। उक्त न्याय निर्णय एवं एक्ट के प्राविधानों के आलोक में अपील कालबाधित होने के कारण ग्राह नहीं है तथा अस्वीकार किये जाने योग्य है।"

3. I have heard the learned counsel appearing for the parties and perused the material on record.

4. In the instant writ petition, the primary issue that lies for the consideration of this Court is that “Whether the appeal filed by the Petitioner under Section 107 of the UPGST Act was within the statutory time limit?”

5. I have reproduced the relevant sub sections of Section 107 of the UPGST Act herein for ease of reference:

*107. Appeals to Appellate Authority. — (1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act, 2017 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.*

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*(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.”*

6. Since the clock of limitation starts running “from the date on which the said order or decision is communicated to such person” it would be prudent to refer to Section 9 of the General Clauses Act, 1897 (hereinafter referred to as the ‘GC Act’) which provides as follows:

*“9. Commencement and termination of time. — (1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.*

*(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”*

7. The phrase “from the date on which the said decision or order is communicated to such person” is crucial as it marks the starting point of the limitation period for filing an appeal. The legislative intent behind this provision is to ensure that the aggrieved party has a clear and fair understanding of the decision or order before the clock starts ticking for the appeal period.

8. Section 9 of the GC Act provides guidance on how to compute periods of time specified in statutes. Specifically, it indicates that when calculating a time period that starts with the word “from”, the day of the event from which the period begins is excluded, and when the period ends with word “to”, the last day of the period is included. According to Section 9 of the GC Act, when calculating the limitation period “from” the date of communication of the order, the day on which the order is communicated is excluded. This ensures that the appellant has a full three months to prepare and file the appeal. For example, if an order is communicated to a taxpayer on January 1, the period of three months will start from January 2.

9. It is also crucial to understand the meaning of the individual terms “within” and “month” as used in legal parlance and specifically within the framework of the UPGST Act.

10. The term “within” in legal terminology typically denotes the inclusion of the entire period specified, up until the last possible moment of the specified time frame. When a statute prescribes an action to be taken “within” a certain period, it generally means that the action can be performed any time from the beginning of the period until the end of the last day of the period. For instance, if a law states that an appeal must be filed “within three months”, it implies that the appeal can be filed at any point during the three-month period, right up until the end of the last day of the three-month period. This interpretation ensures that the party obligated to take action has the full benefit of the entire period specified by the statute. In the context of Section 107 of the UPGST Act, “within three months” means that the appeal can be filed anytime from the date following the communication of the order until the end of the third month, ensuring that the appellant has the maximum possible time to prepare and file their appeal.

11. The term “month” is a fundamental unit of time in statutory interpretation, particularly in the context of legal deadlines and limitation periods. The term “month” can be interpreted in various ways, but in modern statutory contexts, it primarily refers to a calendar month. A calendar month

is defined as the period from a given date in one month to the corresponding date in the following month. For example, a period of one calendar month from January 15 would end on February 14 and the next month in this context would begin from February 15. With the standardization of the Gregorian calendar, a month is commonly understood to mean a calendar month. This uniformity aids in consistent statutory interpretation and application, ensuring that legal deadlines are clear and predictable.

12. Thus, while calculating the three-month period for filing an appeal, the starting point is the day following the date of communication of the order. For example, if an order is communicated on January 1, the three-month period begins on January 2 and ends on April 1:

Communication Date	January 1, 2024
Limitation Begins From	January 2, 2024
Calculation of Three Months	January 2, 2024 to February 1, 2024 February 2, 2024 to March 1, 2024 March 2, 2024 to April 1, 2024
Limitation Ends On	April 1, 2024

13. If the appellant is unable to file the appeal within the initial three-month period, they can seek an extension under Section 107(4) of the UPGST Act. This extension allows the appellant an additional period of one month beyond the initial three months to file the appeal. To calculate the extension period under Section 107(4) of the UPGST Act, the following steps are involved:

1. Determine Initial Period End Date: Identify the last date of the initial three-month period.
2. Add One Month: Add one calendar month to the initial period end date to determine the extended deadline for filing the appeal.

Taking the earlier example, in which, the limitation period ended on April 1, 2024, the extended period for filing an appeal would end on May 1, 2024. It is important to point out here that the extended period would start running from the next day after the expiry of the originally prescribed limitation period.

14. In this regard, reference can be made to the judgment of the Hon'ble Supreme Court in **State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another**, reported in (2010) 12 SCC 210. The Hon'ble Supreme Court in the aforesaid case explained the calculation of the period of a "month" as follows:

*"17. In Dodds v. Walker [(1981) 1 WLR 1027 : (1981) 2 All ER 609 (HL)] the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar [(2001) 7 SCC 197]*

*18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.*

***Re: Question (iii)***

*19. As the award was received by the Executive Engineer on 12-11-2007, for the purpose of calculating the three months period, the said date shall have to be excluded having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897. Consequently, the three months should be calculated from 13-11-2007 and would expire on 12-2-2008. Thirty days from 12-2-2008 under the proviso should be calculated from 13-2-2008 and, having regard to the number of days in February, would expire on 13-3-2008. Therefore the petition filed on 11-3-2008 was well in time and was not barred by limitation."*

15. To qualify for an extension under Section 107(4) of the UPGST Act, the appellant must demonstrate sufficient cause for not presenting the appeal within the initial three-month period. Sufficient cause refers to circumstances

beyond the control of the appellant that prevented them from filing the appeal within the stipulated time frame. The appellate authority may consider following factors when assessing whether sufficient cause has been demonstrated:

**Nature of Circumstances:** The severity and impact of the circumstances preventing the appellant from filing the appeal.

**Evidence Presented:** The quality and credibility of the evidence presented by the appellant to support their claim of sufficient cause.

**Timeliness of Request:** Whether the appellant promptly sought an extension after encountering the circumstances preventing them from filing the appeal within the initial period.

16. Limitation provisions in the UPGST Act set clear timelines for various actions, such as filing returns, making payments, or initiating appeal. By imposing time limits on actions, limitation provisions discourage delay and procrastination. Taxpayers are incentivized to fulfil their obligations promptly, which contributes to the smooth functioning of the tax administration system. Limitation provisions ensure equal treatment of taxpayers by establishing uniform deadlines for compliance. This prevents unfair advantages for non-compliant taxpayers and promotes a level playing field in the taxation process.

17. Counsel appearing on behalf of the Petitioner submitted that the appeal filed under Section 107 of the UPGST Act by the Petitioner was rejected on the ground that the same had been filed one day after the expiry of limitation and by treating 4 months as 120 days. She humbly submits that the authorities below had erred in not reading the provision correctly, and in reality, the appeal of the petitioner had been filed within time on November 10, 2022.

18. It is evident that that the petitioner received the order in original on July 12, 2022 and filed the appeal on November 10, 2022. In light of the same, three months period would have begun on July 13, 2022 and expired on October 12, 2022 and the extended period would have expired on November 12, 2022. In light of the same, it appears that the calculation done by the authorities below is incorrect which warrants the exercise of writ jurisdiction.

19. In the realm of administrative law, the writ jurisdiction of superior courts serves as a powerful tool for ensuring justice, fairness, and adherence to the rule of law. One of the key grounds for invoking writ jurisdiction is the presence of factual errors or errors apparent on the face of the record. This allows aggrieved parties to seek judicial intervention when administrative authorities have committed errors that are evident from the records of the case. In the context of taxation and administrative adjudication, the exercise of writ jurisdiction becomes particularly relevant when there are discrepancies in the calculation of statutory timelines, as exemplified in the instant case. The presence of errors apparent on record provides a valid ground for the exercise of writ jurisdiction by the courts. When administrative authorities commit mistakes that are evident from the records of the case, aggrieved parties have the right to seek judicial intervention to rectify such errors and ensure justice.

20. Accordingly, let there be a writ of certiorari issued against the order dated November 24, 2022 passed by the first appellate authority. The said order is quashed and set aside. This Court directs the first appellate authority to allow the delay in filing the appeal and thereafter hear the appeal on merits and decide the same expeditiously, preferably within a period of two months from the date of production of a certified copy of this order before it.

21. With the aforesaid directions, this writ application is disposed of. There shall be no order as to the costs.

**(Shekhar B. Saraf, J.)**

### **EPILOGUE**

22. Chanakya, also known as Kautilya or Vishnugupta, was a renowned ancient Indian philosopher, economist, and statesman who authored the Arthashastra, a treatise on statecraft, economics, and governance. In the Arthashastra, Chanakya emphasized the importance of dharma, or righteous conduct, in governance and taxation. According to Chanakya, taxation should



be guided by dharma, ensuring that it is fair, equitable, and beneficial to the welfare of the State and its subjects. In New India, the principles espoused in Chanakya's Arthashastra remain relevant for promoting ethical governance and sustainable development. Taxation is not merely a fiscal tool but a means of advancing social justice, economic prosperity, and environmental sustainability. Therefore, compliance with tax obligations is crucial for revenue generation, which, in turn, funds essential public services and infrastructure development.

23. In the evolving landscape of taxation in New India, fostering a culture of compliance has emerged as a cornerstone for achieving economic growth, stability, and social development. Embracing compliance culture entails adhering to tax laws, regulations, and deadlines in a proactive and transparent manner. Within this framework, the role of limitation provisions cannot be understated. These provisions set clear boundaries and timelines for taxpayers and tax authorities, ensuring accountability, fairness, and efficiency in the tax system.

24. A robust compliance culture stimulates economic development by fostering an environment of trust, certainty, and predictability. When taxpayers comply with tax laws and regulations, it enhances investor confidence, attracts foreign investments, and promotes entrepreneurship and innovation. Compliance also ensures a level playing field for businesses, and prevents unfair advantages to non-complying entities and encourages healthy competition. Limitation provisions serve as guardrails within the tax framework, preventing arbitrary or prolonged disputes that could disrupt economic activities. By imposing time limits on legal actions, limitation provisions facilitate the timely resolution of tax matters, reducing uncertainty and promoting business continuity. Strict adherence to limitation periods ensures that tax disputes do not linger indefinitely, providing clarity and stability for taxpayers and investors alike.

**Date:** - 17.5.2024

Kuldeep

(Shekhar B. Saraf, J.)