



Dimensions – 105th Edition

Judgment under GST era

Sujeet Jaiswal v. Union of India and 3 others¹

Issue for Consideration

Can an appeal, under the GST law, be filed after expiry of the prescribed timelimit?

Discussion

- The Respondents passed an order in October 2018 and imposed a penalty on the Petitioner under section 129(1)(b) of the CGST Act, 2017. The Petitioner filed an appeal against the order under section 107 of the CGST Act, 2017 in May 2019.
- However, the appeal was rejected by the Joint Commissioner (Appeals) by an order dated January 9, 2020 on the ground that it was barred by limitation (“impugned order”).
- Aggrieved by the impugned order, the Petitioner filed the present Writ Petition before the Hon’ble High Court of Chhattisgarh. After perusing the facts of the case and relevant provisions of law, the Hon’ble High Court observed as follows:

- The Court observed that the Appellate Authority has been accorded the power to condone the delay of only one month i.e. 30 days. The provisions of section 5² of the Limitation Act, 1963 should not be applicable because a specific period of limitation and the period for condonation of delay have been provided under GST law. Since the original order was issued in October 2018, the appeal should have been filed either within three months i.e. by January 2019 or within a further period of 30 days.
- The Appellate Authority does not have any further power to condone the delay and entertain the appeal considering the fact that the appeal was not filed within the prescribed period.
- The Appellate Authority becomes functus officio and cannot entertain any appeal on the expiry of the prescribed period of four months (three months *plus* extension of one month).
- The Court also relied upon the judgments pronounced by the Hon’ble Supreme Court in the case of *M/s N. V. International v. The State*

¹ 2021-VIL-109-CHG

² Section 5 of the Limitation Act, 1963 - Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.



of Assam & Ors.³ and in the case of *Assistant Commissioner (CT) LTU, Kakinada & Ors. v. Glaxo Smith Kline Consumer Health Care Limited*⁴ in support of its decision.

- a public sector undertaking; or
- a person applying for registration under the provisions of section 25(9) of the CGST Act, 2017.

Judgment

The Hon'ble High Court rejected the Writ Petition filed by the Petitioner against the impugned order.

Dhruva Comments:

The judgment is in line with the decisions pronounced by the Hon'ble Supreme Court wherein a principle has been laid down that when a specific period is prescribed under a Statute, the authority does not have the power to entertain the matter beyond the permissible period, otherwise it would defeat the statutory purpose. The said powers cannot be exercised by the Court even through a writ remedy. Furthermore, the shelter of the provisions contained in the Limitation Act, 1963 cannot be taken when a specific outer timelimit has been provided under the Statute.

Notification

Exemption from Aadhar Authentication for GST registration in specified cases

- The CBIC had issued notification no. 17/2020-Central Tax dated March 23, 2020 prescribing the persons to whom the provisions of section 25(6B) and 6(C) of the CGST Act, 2017 should not apply.
- The CBIC has now rescinded the said notification vide notification no. 03/2021-Central Tax dated February 23, 2021 to state that the provisions of section 25(6B) and 6(C) should not apply to a person who is:
 - not a citizen of India; or
 - a department or establishment of the Central Government or State Government; or
 - a local authority; or
 - a statutory body; or

Circular

Applicability of Dynamic Quick Response (QR) code on B2C invoices

- The CBIC vide circular no. 146/02/2021-GST dated February 23, 2021 has issued clarifications in respect of the applicability of Dynamic QR code in respect of B2C invoices. The key clarifications are as under:
 - The supplies made for exports are regarded as B2B supplies and e-invoices are required to be issued for the same. Accordingly, Dynamic QR code is not required to be mentioned on such invoices.
 - Dynamic QR code should contain the supplier's GSTIN and UPI ID, Payee's bank account number and IFSC, Invoice number and date, total invoice value and GST details. Also, the code should be such that it can be scanned to make a digital payment.
 - If the supplier provides an electronic mode of payment to the customer (like UPI Collect, UPI Intent etc. through mobile application or computer-based application), where though Dynamic QR is not displayed, if cross reference is made to the payment received using such modes on the invoice, then, such invoice shall be deemed to comply with Dynamic QR requirement.
 - In case of pre-paid supplies, the details of the payment made in cash or electronic mode, if mentioned on the invoice would be deemed to be in compliance with the requirement of Dynamic QR code.

³ SLP(C) no. 23808/2019 dated December 6, 2019

⁴ 2020-VIL-18-SC



Payment of Agriculture Infrastructure and Development Cess (AIDC) by EOU / EHTP unit / STP units

- The CBIC has issued circular no. 07/2021-Customs dated February 22, 2021 to clarify various situations under which the EOU / EHTP unit / STP unit (collectively referred to as EOU) are required to pay AIDC, introduced vide the Finance Bill, 2021 and made effective from February 01, 2021. The clarifications are highlighted below:
 - The goods imported by EOU are fully exempted from the AIDC since they are granted benefit of exemption from basic customs duty (“BCD”) under notification no. 52/2003-Customs dated March 31, 2003 read with notification no. 11/2021-Customs dated February 01, 2021.
 - If EOU sells goods in DTA, then the BCD exemption claimed on the finished goods is required to be paid as per notification no. 59/2017-Customs dated June 30, 2017. In such a case, the AIDC exemption claimed gets denied on such inputs and the same is also required to be paid by EOU.
 - In addition to the clearance of goods in DTA, under any situation (like clearance of inputs, capital goods, packing material suitable for repeated use, etc. or exit from EOU scheme) if EOU is required to pay back BCD for which exemption was claimed and allowed under notification no. 52/2003 (*supra*) at the time of import, then, the AIDC exemption shall also be denied and should be paid.
 - EOU is required to submit Form-A as per circular no. 35/2016-Customs dated July 29, 2016 to the proper officer, by 10th of the month, which captures the details of receipt, removal, returns and balance of goods imported under notification no. 52/2003 (*supra*). Now, to ensure effective and monthly monitoring, the Form-A has been amended and circular no. 35/2016 may be treated as having been amended to such extent.





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