HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 04.10.2024
Pronounced on: 17.10.2024

WP(C) No.1898/2024
c/w
WP(C) No.1825/2024, WP(C) No.1562/2024
WP(C) No.1443/2024, WP(C) No.1566/2024
WP(C) No.2628/2023 & WP(C) No.639/2024

1. WP(C) No.1898/2024

M/S Multi Trading Agencies, Drangbal,
Through proprietor Nuzhat Nazir (Aged: 37 years)
W/o Mehraj-ud-Din Malik
R/o Pampore, Pulwama.

...Petitioner(s)

Through:- Mr. B. Tanveer Majid Jehangir, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner, Sales Tax, Kashmir Srinagar.
3. Appellate Authority Appeals-I, Srinagar (Deputy Commissioner State Taxes (Appeals-I), Kashmir.
4. State Taxes Officer STD) Circle-K, Srinagar, Kashmir.

...Respondent(s)

Through:- Mr. D. C. Raina, Advocate General, with
Mr. Syed Musaib, Dy. AG.

2. WP(C) No.1825/2024:

Mohammad Ashraf Fashoo (Aged 40 years)
S/o Mohammad Ramzan Fashoo
R/o Jogilanker Rainawari, Srinagar.

...Petitioner(s)

Through:- Mr. Mudasir Bin Hassan, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner, State Taxes Department, J&K, Srinagar/Jammu.
3. Deputy Commissioner State Taxes (Recovery) Kashmir,
4. Appellate Authority Appeals-I, Srinagar Kashmir.
4. State Taxes Officer, Circle-J, Srinagar.

5. Deputy General Manager, Housing Board, Unit-II, Srinagar.

6. Chief Accounts Officer, Srinagar Municipal Corporation, Srinagar.

7. Branch Manager, Jammu & Kashmir Bank, Branch New Secretariat Road, Srinagar.

...Respondent(s)

Through:- Mr. D. C. Raina, AG with
Mr. Syed Musaib, Dy. AG.
Mr. N. A. Dendroo, Advocate.

3. WP(C) No.1562/2024:

Bashir Ahmad Bangroo (Aged:53 years)
S/o Abdul Ahad Bangroo
R/o Lachman Pora Batmaloo, Srinagar.

...Petitioner(s)

Through:- Mr. Mudasir Bin Hassan, Advocate.
Mr. Syed Musaib, Dy. AG.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner, State Taxes Department, J&K, Srinagar/Jammu.

3. Deputy Commissioner State Taxes (Recovery) Kashmir, Srinagar.

4. Appellate Authority Appeals-I, Srinagar Kashmir.

4. State Taxes Officer, Circle-G, Srinagar.

5. Deputy General Manager, Housing Board, Unit-3rd, Bemina Srinagar.

6. Chief Accounts Officer, Srinagar Municipal Corporation, Srinagar.

7. Branch Manager, Jammu & Kashmir Bank, Lal Mandhi, Srinagar.

...Respondent(s)

Through:- Mr. D. C. Raina, AG with
Mr. Syed Musaib, Dy. AG.
Mr. N. A. Dendroo, Advocate.

4. WP(C) No.1443/2024:

M/S Mir Construction Awantipora, Pulwama
Through its proprietor
Zahoor Ahmad Mir (Aged: 54 years)
S/o Mohammad Amin Mir
R/o Nowpora Tral District, Pulwama.

...Petitioner(s)

Through:- Mr. M. M. Dar, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner, State Tax, Department, Goods and Service Tax, Solina, Rawalpora, Srinagar. Jammu & Kashmir, 190005.

...Respondent(s)

Through:- Mr. D.C.Raina, AG with
Mr. Syed Musaib, Dy. AG.

5. WP(C) No.1566/2024:

M/S: New Unique Guest House,
Hari Singh High Street, Srinagar
Through its proprietor
Mohammad Altaf Shah (Aged: 66 years)
S/o Gh. Mohiddin Shah
R/o Baghe Ali Mardan Khan,
Nalabal Nowshara, Srinagar.

...Petitioner(s)

Through:- Mr. M. M. Dar, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner, State Tax, Department, Goods and Service Tax, Solina, Rawalpora, Srinagar. Jammu & Kashmir, 190005.

...Respondent(s)

Through:- Mr. D.C.Raina, AG with
Mr. Syed Musaib, Dy. AG.

6. WP(C) No.2628/2024:

M/S: Noor Mohammad Bhat & Sons
Lethpora Pulwama
Through Ashiq Hussain Butt (Aged:38 years)
Lethpora, Pulwama, Kashmir-192122.

...Petitioner(s)

Through:- Mr. Abid Malla, Advocate.

V/s

1. Sales Taxes Department, Goods and Services Tax, through its Commissioner, J&K, Srinagar
2. Deputy Commissioner, State Taxes, Kashmir Solina, Srinagar,
3. State Taxes Officer, State Taxes Circle, Kashmir, Srinagar.

...Respondent(s)

Through:- Mr. D.C.Raina, AG with
Mr. Syed Musaib, Dy. AG.

7. WP(C) No.639/2024:

Zaffar Latief Tenga (Aged: 48 years)
S/o Mohammad Latief Tenga
R/o Batipora, Hazratbal, Srinagar
Prop: Zaffar Trading Co.

.....Petitioner(s)

Through:- Mr. Nisar Ahmad Bhat, Advocate.

V/s

1. Union Territory of Jammu & Kashmir through Commissioner/Secretary to Gov. Finance Department, Srinagar/Jammu.
2. Commissioner State Taxes, J&K, Srinagar/Jammu.

3. Deputy Commissioner, State Taxes (Appellate Authority-2nd) Srinagar.

4. State Taxes Officer, Circle-D, Srinagar.

...Respondent(s)

Through:- Mr. D.C.Raina, AG with
Mr. Syed Musaib, Dy. AG.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

Sanjeev Kumar 'J'

1. The issues in these petitions i.e.:

(i) ***Whether the Appellate Authority under Subsection (4) of Section 107 of the Act of 2017 is competent to condone the delay in filing an appeal against a decision or order passed under the Act by an adjudicating authority beyond a period of one months after the expiry of three months' period prescribed for filing appeal under Subsection (1) of Section 107 of the Act of 2017?*** *and*

(ii) ***even if the appellate authority does not have power to condone the delay beyond the period of thirty days as prescribed under Subsection (4) of Section 107 of the Act of 2017, this Court, in the exercise of its extraordinary jurisdiction vested under Article 226 of the Constitution of India, can direct such condonation of delay, if it is satisfied that a case of exceptional nature is made out for such condonation of delay or that the interest of justice would warrant condoning the delay***.

have already been set at rest in judgment dated 13.08.2024 passed in WP(C) No.1413/2024 and clubbed matters and, therefore, are no longer *res integra* and what has been held in the said judgment would apply to all fours of the instant petitions. With regard to these questions, this Court has held thus:

> "The appellate authority cannot entertain an appeal under Section 107 of the Act of 2017 against a

decision or order of the adjudicating authority, if it is filed beyond the period of four months from the date such decision or order is communicated to the person aggrieved.

Sub-section (1) of Section 107 prescribes period of limitation for presenting such appeal(s) as three months. However, Subsection (4) of Section 107 gives discretion to the appellate authority to condone the delay beyond the period of limitation prescribed under Subsection (1) provided it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months. However, such discretion is confined to condoning the delay to the maximum period of thirty days and not beyond that. By making such provision in Subsection (4), the legislature has foreclosed the further discretion of the appellate authority to condone the delay beyond the period of thirty days even by the aid of Section 29 of the Limitation Act. The scheme of the Act of 2017, in particular, provisions of Section 107(4) expressly exclude the applicability of Section 5 of the Limitation Act.

The periods of limitation are procedural in nature. Therefore, the prohibition contained in Section 107(4) of the Act of 2017 to condone delay beyond one month cannot come in the way of Constitutional Court exercising extraordinary jurisdiction to render substantial justice. Therefore, while a statutory prohibition is a strong consideration to be kept in mind, yet it does not bar the jurisdiction of the High Court to condone the

> delay if it is of the opinion that application of delay barring statute would result in gross injustice. Each case is, thus, required to be evaluated on its specific facts and circumstances.

2. The petitioners in all these petitions are dealers registered under Jammu & Kashmir Goods and Services Tax Act, 2017 ["the Act of 2017"] under different registration numbers. They were assessed by the respective adjudicating authority under Section 73/74 of the Act of 2017 and certain demands were raised against them. Feeling dissatisfied and aggrieved by the orders passed by the adjudicating authorities, the petitioners preferred statutory appeals before the Appellate Authority under Section 107 of the Act of 2017. The appeals preferred by the petitioners-assessees were not entertained and rejected indicating the reason for rejection as "*delay in submission of appeals*"

3. Since the Government is yet to constitute Appellate Tribunal, as such, the petitioners, feeling aggrieved by rejection of their appeals, are before us invoking extraordinary writ jurisdiction vested in this Court under Article 226 of the Constitution of India.

WP(C) No.1898/2024

4. In the instant case, the impugned order was passed by the adjudicating authority on 05.12.2023, and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on her phone Nos.9858756786 and 9419086057 and Email Id: taxinfo83@gmail.com. However, the appeal was filed on 10.06.2024 i.e. after a period of six

months and five days. The petitioner had not filed any separate application for condonation of delay. However, in the memo of appeal, the petitioner has stated the reasons of delay as under:-

> "b) reason of delay:- Applicant was under the bona fide belief that SCN with respect to the tax period was dropped and proceedings were concluded after the Department issued the acceptance of reply for the applicant. The Applicant being a mother of specially abled child could not focus on the business and consequently, the applicant left the business and her focus shifted completely to her family. It was in that period the department has issued order dated 05.12.2023 underorder No.ZD011223002415B followed by several reminders. Since the applicant was spending her time with her specially abled child, who requires special attention, could not pick up the notice and reminders issued by department.

5. Neither the petitioner has disputed the date of communication of the order nor has she placed on record any material before the appellate authority to demonstrate that during the period of limitation the petitioner was under a legal disability, which prevented her from filing the appeal in time. If such is the reason given by the petitioner to seek condonation of delay for the period beyond thirty days, as prescribed under Section 107(4) of the Act of 2017, this Court cannot, by any stretch of reasoning, bring the case of the petitioner under exceptional circumstances or term it a case of extreme nature to invoke its extraordinary jurisdiction and condone the delay despite there being statutory prohibition not to do so after a particular period. The petitioner has herself remained negligent and remissness in preferring the appeal

within time and, therefore, must suffer its consequences. The assessment order passed by the adjudicating authority under the Act of 2017 cannot be kept open ended for indefinite period and the timelines prescribed in the statute are required to be respected and complied with.

WP(C) No.1825/2024

6. In the instant case, the order under Section 73 of the Act of 2017 was passed by the adjudicating authority concerned on 22.11.2023 and the same was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on his phone No.9797777644 and Email Id. 1985mohamadashraf@gmail.com The appeal was filed by the petitioner before the appellate authority on 28.05.2024 i.e. after seven months and six days. There was, thus, a delay of three months beyond the period of thirty days prescribed under Section 107(4) of the Act of 2017. In this case also, the petitioner had not moved any separate application seeking condonation of delay and rightly so, as the petitioner was aware that the condonation of delay beyond thirty days was not permissible in view of the express provisions of Subsection (4) of Section 107 of the Act of 2017. In the memo of appeal no reason for condonation of delay was given by the petitioner.

7. It is not the case of the petitioner that he was not communicated the order impugned by the adjudicating authority in time or that his appeal was within the prescribed period of limitation reckoned from the date of communication of the order. The petitioner also does not plead

any legal disability, which prevented him from preferring the appeal in time.

8. In view of the aforesaid facts and circumstances, we are of the considered opinion that the case of the petitioner herein also does not fall under exceptional circumstances explained above, which would warrant interference by this Court in the exercise of extra ordinary writ jurisdiction conferred by Article 226 of the Constitution of India.

WP(C) No.1562/2024:

9. In the instant case, the order impugned in the appeal before the appellate authority was passed by the adjudicating authority on 15.12.2023 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (Email/SMS). The order was communicated to the petitioner on his telephone Nos.941907046 & 7006828103 and Email Id. bangroobashir142@gmail.com. The appeal was preferred by the petitioner before the appellate authority on 05.07.2024 i.e. after six months and twenty-one days. There was, thus, a delay of more than four months after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. There is no separate application filed by the petitioner seeking condonation of delay and no reason for condonation of delay was given in the appeal.

10. Learned counsel for the petitioner submits that the Assessing Authority did not take into account the fact that in respect of financial year 2017-2018, tax to the tune of Rs.133478/ had been deducted at

source with respect to the works of construction of Model Police Station, Safapora Ganderbal and construction of GNM at Ganderbal. He submits that while passing the assessment order, which was sought to be challenged before the Appellate Authority, the aforesaid aspect escaped the attention of the Assessing Authority.

11. Be that as it may, the issue raised cannot be adjudicated upon in these proceedings. However, having regard to the averments made in the petition, we deem it appropriate to permit the petitioner to approach the Assessing Authority with proof with regard to payment of Goods and Services Tax deducted at source. Should the petitioner approach the authority concerned, the issue shall be re-examined and necessary correction, if any required in the assessment order, shall be made. We make it clear that we do not intend to return any finding on merits and instead leave it to the Assessing Authority to re-visit the order of assessment if the same is required in the light of the aforesaid facts brought to the notice of the Assessing Authority and projected double payment of GST.

WP(C) No.1443/2024:

12. In the instant case, the order impugned in the appeal before the appellate authority was passed on 12.12. 2023 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The order was communicated to the petitioner on his phone No.+9188997749449 and Email Id. mirconstructionawantipora@gmail.com The appeal was preferred by the petitioner before the appellate authority on 16.05.2024 i.e. after a period

of five months and four days of the communication of the order. There was, thus, a delay of three months and four after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. No separate application was filed by the petitioner seeking condonation of delay. However, in the memo of appeal, the petitioner has stated the reason for delay as under:

> "I have filed the appeal against the order passed by the Sales Tax Officer Circle K. Unfortunately, I have not filed the appeal in time because my mother is suffering in a crucial disease 'dementia' and during her follow and treatment of the said disease, I could not reply file the appeal in time."

13. Learned counsel for the petitioner submits that the Assessing Authority did not take into account the fact that in respect of financial year 2017-2018, tax to the tune of Rs.3,59,100/ and Rs.4,97,700/ had been deducted at source with respect to the works of construction of Pre-settling tank of head works site of 6.80 MGD capacity water treatment plant at Alasteng. He submits that while passing the assessment order, which was sought to be challenged before the Appellate Authority, the aforesaid aspect escaped the attention of the Assessing Authority.

14. Be that as it may, the issue raised cannot be adjudicated upon in these proceedings. However, having regard to the averments made in the petition, we deem it appropriate to permit the petitioner to approach the Assessing Authority with proof with regard to payment of Goods and Services Tax deducted at source. Should the petitioner approach the authority concerned, the issue shall be re-examined and necessary correction, if any required in the assessment order, shall be made. We

make it clear that we do not intend to return any finding on merits and instead leave it to the Assessing Authority to re-visit the order of assessment if the same is required in the light of the aforesaid facts brought to the notice of the Assessing Authority and projected double payment of GST.

WP(C) No.1566/2024:

15. In the instant case, the order impugned in the appeal before the appellate authority was passed on 05.12.2023 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The order was communicated to the petitioner on his phone No.9086480200 and Email Id: Jrsassociates2005@gmail.com .The appeal was preferred by the petitioner before the appellate authority on 02.07.2024 i.e. after six months and twenty-one days of the communication of the order. There was, thus, a delay of three months and eleven days after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. No separate application was filed by the petitioner seeking condonation of delay. No reason for condonation of delay was given by the petitioner in the memo of appeal.

16. It is not the case of the petitioner that he was not communicated the order impugned by the adjudicating authority in time or that his appeal was within the prescribed period of limitation reckoned from the date of communication of the order. The petitioner also does not plead

any legal disability, which prevented him from preferring the appeal in time.

17. In view of the aforesaid facts and circumstances, we are of the considered opinion that the case of the petitioner herein also does not fall under exceptional circumstances explained above, which would warrant interference by this Court in the exercise of extra ordinary writ jurisdiction conferred by Article 226 of the Constitution of India.

WP(C) No.2628/2023:

18. In the instant case, the order impugned in the appeal before the appellate authority was passed on 09.03.2022 under Section 73 of the Act of 2017. The order was communicated to the petitioner on the same day through GST Portal (mail/SMS). The appeal was preferred by the petitioner before the appellate authority on 28.02.2023 i.e. after a period of seven months and 19 days of the communication of the order. There was, thus, a delay of more than six months after the expiry of the period of thirty days envisaged under Section 107(4) of the Act of 2017. The petitioner had not filed any separate application for condonation of delay. However, in the memo of appeal, the petitioner has stated the reason of delay as under:

> "(b) Reason for delay – The assessee is an illiterate person who is not well versed with computer and IT. He was unable to view notices online. Further the physical notices were note received by him on account of wrong address.

19. Neither the petitioner has disputed the date of communication of the order nor has he placed on record any material before the appellate

authority to demonstrate that during the period of limitation the petitioner was under such a disability, which prevented him from filing the appeal in time. If such is the reason given by the petitioner to seek condonation of delay for the period beyond thirty days, as prescribed under Section 107(4) of the Act of 2017, this Court cannot, by any stretch of reasoning, bring the case of the petitioner under exceptional circumstances or term it a case of extreme nature to invoke its extraordinary jurisdiction and condone the delay despite there being statutory prohibition not to do so after a particular period. The petitioner has himself remained negligent and remissness in preferring the appeal within time and, therefore, must suffer its consequences. The assessment order passed by the adjudicating authority under the Act of 2017 cannot be kept open ended for indefinite period and the timelines prescribed in the statute are required to be respected and complied with.

20. In view of the aforesaid facts and circumstances, we are of the considered opinion that the case of the petitioner herein also does not fall under exceptional circumstances explained above, which would warrant interference by this Court in the exercise of extraordinary writ jurisdiction conferred by Article 226 of the Constitution of India.

WP(C) No.639/2024:

21. Pursuant to a show-cause notice dated 20.05.2022, reply was submitted by the petitioner on 29.05.2022. The Sales Tax Officer, Circle-P, Kashmir, considered the reply and vide order dated 01.06.2022, cancelled the registration of the petitioner w.e.f. 01.06.2022.

22. Aggrieved of the cancellation of registration, the petitioner filed an appeal under Section 107 of the GST Act, 2017 before the Appellate Authority State Taxes, Appeals-II Kashmir Division, Srinagar. The appeal came to be dismissed by the Appellate Authority vide order dated 18.03.2024, on the ground that the same was barred by limitation. This is how the petitioner has invoked the Article 226 of the Constitution of India, seeking *inter alia* a direction to the respondents to restore his registration cancelled in terms of the order dated 01.06.2022.

23. Similar cases have come up before this Court, wherein, subject to the petitioners' undertaking to deposit the tax and penalty along with interest in accordance with the GST Act, 2017, a direction has been issued to the Competent Authority to restore the registration of the said petitioners. The aforementioned orders have been passed on the concession given by the respondents to restore the registration of the defaulting dealers, provided they comply with law, by submitting the returns and depositing the sales tax and other dues payable by them under the GST Act, 2017.

24. Having heard learned counsel for the parties and perused the material on record and also in view of the fact that the case in hand is similar and identical to the aforementioned cases and, therefore, this petition is disposed of by directing the petitioner to approach the Competent Authority for registration of his GST number within a period of seven days from today. The Competent Authority shall restore GST number of the petitioner immediately, subject to the completion of all requisite formalities. The petitioner shall file the returns and deposit the taxes and penalty along with interest within a period of seven days. In the event the needful is not done by the petitioner within stipulated period, this order shall cease to be in operation. Attention of

this Court is invited to order dated 26.07.2024 passed in WP(C) No.1061/2024 c/w WP(C) No.1130/2024 and orders dated 1st April, 2024 and 29th April, 2024 respectively passed in WP(C) No.182/2024 and WP(C) No.873/2024.

25. Since this petition has been disposed of based on the peculiar facts and circumstances of the case, and also on the analogy of the cases earlier decided, this Court has not gone into the legal issue raised by the learned Advocate General on behalf of the respondents. Nothing said in this order shall be construed as an expression of opinion by this Court that notwithstanding the availability of the alternative remedy of appeal, petition under 226 is directly maintainable.

(Rajesh Sekhri)
Judge

(Sanjeev Kumar)
Judge

Srinagar
17.10.2024
"Bhat Altaf-Secy"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No