

WPA 26637 of 2024

**Shruti Iron Private Limited
Vs.
Assistant Commissioner, State Tax, Bally & Salkia
Charge & Ors.**

Mr. Anil Kumar Dugar
Mr. Rajarshi Chatterjee
Mrs. Suman Sahani

... .. for the petitioner

Mr. Anirban Roy
Mr. Md. T.M.Siddiqui
Mr. Tanoy Chakraborty
Ms. Sumita Shaw
Mr. Saptak Sanyal

... .. for the State

1. The facts in a nutshell are that the petitioner received a notice in GST ADT-01 from Respondent No. 1 for an audit of its accounts for the period from July 01, 2017 to March 31, 2018, under Section 65 of the GST Act. In response, the petitioner submitted all the required documents. However, the final audit report dated August 26, 2022, directed the petitioner to deposit disputed tax amounts, which the petitioner disagreed with.

2. Following the disagreement, a show-cause notice in GST DRC-01 dated May 3, 2023, was issued, demanding payment of tax, interest and penalties amounting to significant sums under various heads, citing alleged violations under Section 16(2)(c) and Section 73 of the Act.

3. The petitioner entrusted the matter to its advocate, who, due to a mix-up, failed to respond to the show-cause notice. Consequently, an ex-parte adjudication order was passed on October 16, 2023, confirming the tax demands and issuing a summary order in GST DRC-07.

4. The petitioner filed an appeal on March 19, 2024, but exceeded the statutory period under Section 107 of the Act by 30 days due to the serious illness of its director, Mr. Praveen Kumar Agarwal, who handles financial and tax matters. Despite providing detailed explanations and supporting documents for the delay, the appellate authority rejected the appeal on June 28, 2024, on the grounds of limitation.

5. The petitioner contends that the unsigned show-cause notice, summary order and adjudication order are void and unenforceable. Furthermore, the proceedings under Section 73 of the Act for the financial year 2017-18 are barred by limitation, as the statutory period for initiating and concluding such proceedings had expired before the issuance of the notice.

6. The petitioner also claims that the tax demands are substantively erroneous, as it had paid all due taxes and claimed input tax credit (ITC) in accordance with the law. The petitioner further highlights that the

liabilities of suppliers cannot legally be transferred to purchasers.

7. The petitioner highlights that it had submitted a detailed reply to the pre-show cause notice issued in Form GST DRC-01A, refuting the allegations. However, Respondent No. 1 did not take any recovery action against the defaulting suppliers, which is a statutory prerequisite for demanding disputed ITC from the recipient, and also failed to consider the submissions before issuing the impugned show-cause notice.

8. Aggrieved by the orders and the procedural irregularities, the petitioner has approached this Hon'ble Court under Article 226 of the Constitution, seeking relief against the actions and proceedings initiated by Respondent Nos. 1 and 2.

9. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition as statutory provisions on limitation should be interpreted liberally in cases where genuine hardships are demonstrated, particularly in light of judicial precedents supporting such relief.

10. In **S. K. Chakraborty & Sons Vs. Union of India** reported in *[2024] 159 taxman.com 259 (Calcutta)*, the Hon'ble Division Bench comprising Justice

Debangsu Basak and Justice Md. Shabbar Rashidi held that: -

“19. Section 107 of the Act of 2017 does not exclude the applicability of the Act of 1963 expressly. It does not exclude the applicability of the Act of 1963 impliedly also if one has to consider the provisions of Section 108 of the Act 2017 which provides for a power of revision to the designated authority, against an order of adjudication. In case of revision a far more enlarged period of time for the Revisional Authority to intervene has been prescribed. Two periods of limitations have been prescribed for two different authorities namely, the Appellate Authority and the Revisional Authority in respect of the same order of adjudication. Any interference with the order of adjudication either by the Appellate Authority or by the Revisional Authority would have an effect on the defaulter/notice. Section 107 does not have a non-obstante clause rendering Section 29(2) of the Act of 1963 non-applicable. In absence of specific exclusion of the Section 5 of the Act 1963 it would be improper to read an implied exclusion thereof. Moreover, Section 107 in its entirety has not expressly stated that, Section 5 of the Act of 1963 stands excluded.

20. Therefore, in our view, since provisions of Section 5 of the Act of 1963 have not been expressly or impliedly excluded by Section 107 of the Act of 2017 by virtue of Section 29(2) of the Act of 1963, Section 5 of the Act of 1963 stands attracted. The prescribed period of 30 days from the date of communication of the adjudication order and the discretionary period of 30 days thereafter, aggregating to 60 days is not final and that, in given facts and circumstances of a case, the period for filing the appeal can be extended by the Appellate Authority”.

11. In light of the procedural irregularities and the arbitrary nature of the actions, this court finds the

petitioner's case to be meritorious. Accordingly, the writ petition is allowed, and the appellate order dated June 28, 2024 is quashed. The Appellate Authority is requested to consider and decide the application for condonation of delay filled by the petitioner on merits. If, the explanations advance for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal, hear and dispose the appeal on merit.

12. All pending applications are accordingly disposed of.

13. There shall be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajarshi Bharadwaj, J.)