



2026:AHC:43016

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 361 of 2024

M/S Tenet Networks Private Ltd

.....Petitioner(s)

Versus

GST Council and 3 others

.....Respondent(s)

Counsel for Petitioner(s) : Shubham Agrawal
Counsel for Respondent(s) : A.S.G.I., C.S.C., Gaurav Mahajan,
Gopal Verma

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Shubham Agrawal, learned counsel for the writ petitioner, Sri Gopal Verma, learned counsel for Respondent no.1, Sri Amit Mahajan for Respondent no.4 and Sri Shashikant Mishra, learned Standing Counsel for Respondent nos. 2 and 3.
2. Though a counter affidavit has been filed on behalf of Respondent Nos. 2 and 4/ contesting respondents sworn by State Tax Officer, Mobile Squad, Unit-4, State Tax/ Commercial Tax Noida, Gautam Budh Nagar, but the learned counsel for the writ petitioner has made a statement at Bar that he does not propose to file rejoinder and the writ petition be decided on the basis of the documents available on record.
3. With the consent of the parties, the writ petition is being decided at the fresh stage.
4. The case of the writ petitioner is that the writ petitioner is engaged in the business of wireless networking and it is registered under the provisions contained under UPGST/CGST Act, 2017. As per the writ petitioner, it had purchased machine from wireless networking Credo 4G, valuing Rs.26,25,000/- from M/s Brij Systems Ltd. Delhi. An e-way bill came to be prepared containing GST @ 18% to the tune of Rs.47500/- which was generated by the supplier on 20.07.2022. The consignment in question came to be intercepted by the third respondent, Assistant Commissioner, Sales Tax, Mobile Squad-4, Noida, Gautam Budh Nagar on 30.07.2022 on the count that part B of e-way bill was not filled by the transporter. Physical verification of the goods was done on the said date and no discrepancy was

found. The third respondent on 01.08.2022 issued a notice, in Form MoV-07 on the ground that part-B of e-way bill was not filled and thereafter on 01.08.2022 itself the third respondent, Assistant Commissioner, Sales Tax, Mobile Squad-4, Noida, Gautam Budh Nagar passed a penalty order in Form MOV-09 under Section 129(1)(a) of the Act imposing the penalty of Rs.9,50,000/-. According to the writ petitioner the said order is exparte. Though according to the writ petitioner, on 01.08.2022, the penalty order stood uploaded but the summary Form DRC-07 has been uploaded on the portal on 26.11.2022 itself post request made by the writ petitioner on 26.11.2022 before the respondents to provide a copy of the guidelines for issuance of Form DRC-07 in case the vehicle detained under e-way bill provisions issued by the department if any. Since according to the writ petitioner, Form-DRC-07 was a mandatory document, which along with the order in original is to be challenged by way of an appeal so the writ petitioner preferred a statutory appeal before the second respondent, Addl. Commissioner, Grade-2 Appeal-II Commercial Tax, Noida on 03/09.01.2023, taking the grounds for condonation of delay. The appeal so preferred by the writ petitioner before the appellate authority came to be rejected on the ground of delay and limitation by virtue of the order dated 21.07.2023 of Addl. Commissioner, Grade-2, Appeal-II, Commercial Tax, Noida.

5. Questioning the order in original dated 01.08.2022 as well as the order dated 21.07.2023 passed by the Appellate Authority, the present writ petition has been preferred.

6. Learned counsel for the writ petitioner has sought to argue that at this juncture, the writ petitioner is confining his relief with respect to challenge raised to the order dated 21.07.2023 passed by respondent no.2 rejecting the appeal. Contention is that though the order in original came to be passed on 01.08.2022, but the Form DRC-07 which was to be accompanied with the order in original came to be loaded on 26.11.2022 and thus, the limitation period of three months and a grace period of one month more under Section 107 of the Act would come into play and run from 26.11.2022. In order to strengthen the said argument, learned counsel for the writ petitioner has relied upon a decision of this Hon'ble Court in *Mohd. Ishak vs. State of U.P.*, 2025 UPTC (Vol 119)-134.

7. Learned Standing Counsel while countering the submissions so made by

learned counsel for the writ petitioner has submitted that the writ petitioner was very well aware about passing of the original order dated 01.08.2022 and he himself also deposited the penalty pursuant where to the goods stood released, however taking a lame excuse that Form GST DRC-07 came to be issued on 26.11.2022, the writ petitioner seeks to get the delay condoned, which even otherwise is not liable to be condoned.

8. The arguments so advanced by the learned Standing Counsel has been adopted by Sri Verma and Sri Mahajan.

9. I have heard the submissions so made across the Bar and perused the records carefully.

10. Facts are not in issue. It is not in issue that on 01.08.2022, the order in original came to be passed by the Adjudicating Authority and an appeal stands provided under Section 107 of the UPGST/CGST Act, 2017. The period of limitation of preferring an appeal is three months with a grace period of one month totalling to four months. Notably, the order in original came to be passed on 01.08.2022. The appeal was preferred by the writ petitioner on 03/09.01.2023. In the memo of appeal, which is at page-40 of the paper-book, relevant extract at page-45 and 46, in para-12 and 13 the following was observed:-

"12. That Appellant submits that in the aforesaid matter, no Demand Order u/s 129(3) of the CGST Act, 2017 and a summary of the demand order in FORM GST DRC-07 has been uploaded electronically in pursuance of Rule 142(5) of CGST Rules, 2017. Therefore, Appellant vide their letter dated 25/11/2022 asked the respondent to provide the copy of demand order in FORM GST DRC-07. The copy of said letter dated 25/11/2022 is annexed hereto and marked as Annexure -7.

13. That in pursuance of the Appellant letter dated 25/11/2022, the respondent provided a copy of demand order in FORM GST DRC-07 on WhatsApp and the Appellant is feeling aggrieved against the action on the Respondent, hence this Appeal."

11. The Appellate Authority, in its order dated 21.07.2023, held as under:-

"//निर्णय //

प्रस्तुत अपील, श्री अनुज गोयल, सहायक आयुक्त, राज्य कर, सचल दल-चतुर्थ इकाई, नोएडा, गौतमबुद्धनगर द्वारा अपीलार्थी के वर्ष 2022-23 में उत्तर प्रदेश वस्तु एवं सेवा कर अधिनियम-2017 की धारा-129 के अन्तर्गत आनलाइन पारित पंजीयन निरस्तीकरण आदेश दिनांक 01.08.2022 के विरुद्ध योजित की गयी है, जिसमें विवादित धनराशि रु0 950,000 है।

अपीलार्थी द्वारा उ० प्र० वस्तु एवं सेवा कर अधिनियम की धारा-107 के अन्तर्गत उल्लिखित पारित आदेश के विरुद्ध ऑनलाइन अपील दिनांक 03.01.2023 को दाखिल की गयी है, जिसकी हार्डकॉपी कार्यालय में दिनांक 09.01.2023 को दाखिल की गयी है। जबकि धारा-107 (1) में दिये गये प्राविधान के अनुसार निर्णय/आदेश को मंसूचित किये जाने की तारीख से 3 माह एक माह (कुल 04 माह) के भीतर अपील दायर किये जाने की व्यवस्था है।

अपील विलम्ब से दाखिल किये जाने के सम्बन्ध में अपीलार्थी को नोटिस जारी की गयी। नोटिस के अनुपालन में फर्म के अधिवक्ता श्री सुशील कुमार अंतल उपस्थित हुए तथा अपील विलम्ब के सम्बन्ध में कहा गया कि पारित आदेश DRC-7 पोर्टल पर नहीं दिख रहा था, जिसे विभाग द्वारा दिनांक 26.11.2022 को पोर्टल पर अपलोड किया गया तथा दिनांक 26.11.2022 को ही आदेश की प्रति *WHATS UP* पर प्राप्त करायी गयी। जिसके पश्चात दिनांक 03.01.2023 को अपील दाखिल कर दी गयी है। अपीलार्थी का लिखित उत्तर पत्रावली पर रखा गया है।

मेरे द्वारा पत्रावली पर उपलब्ध तथ्यों एवं कर निर्धारण अधिकारी द्वारा पारित आदेश का परिशीलन किया गया। आदेश दिनांक 01.08.2022 को ऑनलाइन पारित है और ऑनलाइन आदेश व्यापारी के जीएसटी पोर्टल पर उसके *DASH BOARD / LOGIN* पर तुरन्त उपलब्ध हो जाते हैं, अतः संसूचना की तिथि आदेश पारित - होने की तिथि ही मानी जायेगी जो कि व्यापारी द्वारा अपील मेमो (*APL-01*) में स्वयं भी स्वीकार की गयी है। व्यापारी ने *Dashboard* पर उपलब्ध आदेशों से दिनांक 22.11.2022 का प्रिन्टआउट दाखिल किया है। उक्त सूची में विवादित आदेश मूव-9 क्रमांक *ZD0908220010167* दिनांक 01.08.2022 स्पष्ट रूप से परिलक्षित हो रही है। इसके अलावा दिनांक 01.08.2022 को ही आदेश के अनुपालन में व्यापारी द्वारा अर्थदण्ड भी जमा कराया गया है। अतः अपीलार्थी द्वारा बिलम्ब के सम्बन्ध में प्रस्तुत उत्तर आधारहीन होने के कारण स्वीकार योग्य नहीं पाया गया।

माननीय कर्नाटका हाईकोर्ट्स के द्वारा विलम्ब में दाखिल अपील के मामलों की गयी सुनवाई के सन्दर्भमें "*Hon'ble Division Bench in W.A.No.942/2021 (SIMPLEX INFRASTRURES LTD AND ANOTHER VIS THE JOINT COMMISSIONER OF CENTRAL TAX AND OTHER, DD ON 03-12-2021)* के निर्णय में कहा गया है कि *Appellate Authority does not have power to condone the delay in preferring the appeal. It is always open for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and this Court is empowered to condone the delay in order to do complete and substantial*"

अतः वस्तु एवं सेवाकर अधिनियम-2017 की धारा-107 (4) में दी गई व्यवस्था के अनुसार अपीलीय अधिकारी, यह समाधान हो जाने पर कि पर्याप्त कारणों से 03 माह की अवधि के भीतर अपीलार्थी द्वारा अपील प्रस्तुत (*Present*) नहीं की जा सकी, अतिरिक्त एक माह की अवधि के भीतर अपील प्रस्तुत करने का अनुज्ञात (*Allow*) कर सकता है। अतः दिनांक 01.08.2022 से (तीन माह एक माह) चार माह की अवधि दिनांक 30.11.2022 को समाप्त हो गयी, जबकि अपीलार्थी द्वारा प्रश्नगत अपील दिनांक 03.01.2023 को ऑनलाइन दाखिल की गयी है, जो एक

अतिरिक्त माह के पश्चात भी 01 माह 02 दिन विलम्ब से दाखिल की गयी है। इस प्रकार अपीलार्थी द्वारा प्रस्तुत अपील, विवादित निर्णय / आदेश की संसूचना (तीन माह एक माह) 04 माह की अवधि व्यतीत होने के पश्चात इस कार्यालय में प्रस्तुत की गई है।

यहां यह भी उल्लेखनीय है कि प्रोपर अधिकारी द्वारा अपीलार्थी के विरुद्ध धारा-129 के अन्तर्गत कार्यवाही इस आधार पर की गयी है कि जांच के समय माल से सम्बन्धित जो ई वे बिल प्रस्तुत किया गया, वह वैध नहीं था। प्रश्नगत प्रकरण में अपील स्तर पर भी अपीलकर्ता व्यापारी द्वारा प्रश्नगत अपील समयान्तर्गत दाखिल नहीं की गयी है। अतः प्रस्तुत अपील वस्तु एवं सेवा कर अधिनियम की धारा-107(1) व 107 (4) में दी गयी समयावधि (तीन माह एक माह) कुल चार माह के पश्चात प्रस्तुत करने के कारण ग्राह्य नहीं है।

// आदेश//

दूषित अपील संख्या-05/23, वर्ष 2022-23 धारा-129 (ARN-AD0901230037099) को वस्तु एवं सेवा कर अधिनियम की धारा-107(1) व 107(4) के अनुसार ग्राह्य योग्य न होने के कारण अस्वीकार किया जाता है। आदेश की मूल प्रति अपीलार्थी पत्रावली पर रखी जाये तथा इस आदेश की एक-एक सत्यापित प्रति अपीलकर्ता को, प्रॉपर अधिकारी को एवं राज्य प्रतिनिधि को प्रेषित की जाये।"

12. As a matter of fact, in para-11 and 12 of the memo of appeal, the writ petitioner, who is the appellant herein had taken the ground that the summary of the demand order in Form GST DRC-07 has not been uploaded till 26.11.2022 and the application came to be preferred for uploading of the same and the same stood uploaded on the same date and also was communicated to the writ petitioner on whatsapp. Thus according to the writ petitioner the delay is being sought to be condoned on the pretext that the Form GST DRC-07 happens to be a mandatory requirement for filing of the appeal. A copy of the application dated 26.11.2022 requesting for uploading of the Form GST DRC-07 has also been appended at 59/60 of the paper book. The said contention so raised by the writ petitioner has not been considered while deciding the appeal and rejecting the same.

13. In the opinion of the Court, once a ground is taken in a memo of appeal, then the Appellate Authority is to consider the said ground. Might be the same may be accepted or rejected. The issue herein assumes relevancy on the aspect of the matter that a coordinate Bench of this Court in **Mohd. Ishak (supra)** had the occasion to consider the effect, import and impact of Form GST DRC-07, wherein in para-8 and 9, the following was observed:-

"8. The declaration of the Form GST DRC-07 as contemplated in Rule 142(5) of the Goods and Service Tax Rules, 2017 is a mandatory requirement of law. It is undisputed that the impugned order dated 19.08.2023 was not accompanied by the

Form GST DRC-07. The latter form was uploaded only on 18.01.2023. The petitioner did not have knowledge of the impugned order and hence cannot be faulted for the delay in filing of the appeal.

9. The impugned order dated 31.08.2024 has rejected the appeal with a cryptic finding "delay in submission of the appeal". The order does not depict the application of mind and was passed in a mechanical fashion."

14. Since the grounds taken by the writ petitioner for condonation of the delay have not been adverted to in correct perspective, thus the appellate order cannot be sustained.

15. Accordingly, the writ petition is being decided in following terms:-

(a) The order dated 21.07.2023 passed by the Addl. Commissioner, Grade-2 Appeal-2 Commercial Tax, Noida is set aside.

(b) The matter is remitted back to the appellate authority to decide the delay condonation application for condonation of delay in filing the appeal strictly in accordance with law within a period of two months, from the date of production of certified copy of the order.

16. With the aforesaid observations, the writ petition is **disposed of**.

February 25, 2026

N.S.Rathour

(Vikas Budhwar,J.)