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Time Spent in Pursuing Rectification Application under Section 161 of the CGST Act Excludible While Computing Limitation for Filing Appeal under Section 107

The Hon'ble Gauhati High Court in ***Debabrata Bhowmick v. Union of India & Ors. [Writ Petition (C) No. 2332 of 2026 dated June 24, 2026]*** set aside the Order-in-Appeal whereby the appeal filed under Section 107 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) was rejected as time-barred and held that the period spent in bona fide prosecuting a rectification application under Section 161 of the CGST Act is liable to be excluded while computing the period of limitation prescribed under Section 107 of the CGST Act for filing an appeal, by applying the principle enshrined in Section 14 of the Limitation Act, 1963 (**"the Limitation Act"**). It was further held that where an appeal is filed within the condonable period but without an accompanying application for condonation of delay, the Appellate Authority is obliged to afford at least one opportunity to the appellant to explain the delay instead of rejecting the appeal outright as time-barred.

Facts:

Mr. Debabrata Bhowmick (**"the Petitioner"**), proprietor of M/s Harekrishna Drugs, is a registered assessee under the CGST Act carrying on business at Nagaon, Assam.

On scrutiny of the records relating to Input Tax Credit (**"ITC"**) for the Financial Year (**"FY"**) 2020-21, the Revenue Department (**"the Respondent"**) had reason to believe that the Petitioner had contravened Section 16 and Section 39 of the CGST Act by making short payment of GST and availing excess ITC of Rs. 1,08,205/-. Accordingly, a notice in Form GST ASMT-10 dated October 24, 2024 was issued, followed by a notice dated October 29, 2024 under Section 73(5) of the CGST Act demanding Rs. 2,01,246/- and thereafter, a Show Cause Notice dated November 22, 2024 (**"the SCN"**) under Section 73(1) of the CGST Act.

The Petitioner filed a reply to the SCN on December 18, 2024 contending that the difference in ITC arose solely on account of non-furnishing of returns by the supplier within the due date, that the said ITC was duly reflected in GSTR-2B for the month of April 2021 i.e., in the next FY and had remained unclaimed, and that the discrepancy was merely a procedural error without any intention to avail excess ITC.

However, the Adjudicating Authority, vide Order-in-Original dated January 3, 2025 (**“the OIO”**), confirmed the demand of excess availed ITC of Rs. 90,948/- along with applicable interest and imposed a penalty of Rs. 20,000/- under Section 73 of the CGST Act.

On receipt of the OIO, the Petitioner filed a rectification application under Section 161 of the CGST Act on March 8, 2025 i.e., well within the prescribed period of three months, which came to be rejected by the Adjudicating Authority on April 24, 2025 on the ground that the reasons cited therein were not found satisfactory.

Thereafter, the Petitioner filed an appeal in Form GST APL-01 under Section 107 of the CGST Act on May 23, 2025 against the OIO. The Appellate Authority, vide Order-in-Appeal dated February 19, 2026 (**“the Impugned Order”**), rejected the appeal under Section 107(11) of the CGST Act as time-barred, holding that the appeal was presented twenty-one days beyond the maximum period of four months (i.e., the normal period of three months plus the condonable period of one month) from the date of the OIO.

Aggrieved by the Impugned Order, the Petitioner filed the present writ petition before the Hon’ble Gauhati High Court.

<u>Issue:</u>

Whether the period spent in bona fide prosecuting a rectification application under Section 161 of the CGST Act is liable to be excluded while computing the period of limitation for filing an appeal under Section 107 of the CGST Act?

Held:

The Hon'ble Gauhati High Court in ***Writ Petition (C) No. 2332 of 2026*** held as under:

- **Observed that**, a combined reading of sub-section (1) and sub-section (4) of Section 107 of the CGST Act makes it clear that an appeal against an order of the Adjudicating Authority is to be filed within three months, which period can be extended by a further period of one month on sufficient cause being shown, *but not beyond*. Therefore, in view of Section 29(2) of the Limitation Act, the applicability of Section 5 of the Limitation Act for condonation of delay beyond the statutorily prescribed period stands excluded qua appeals under Section 107 and Section 112 of the CGST Act.

- **Noted that**, relying upon the judgment of the Hon'ble Supreme Court in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department [(2008) 7 SCC 169***], there is a fundamental distinction between Section 5 and Section 14 of the Limitation Act – the power to excuse delay and grant extension of time under Section 5 is discretionary, whereas under Section 14, exclusion of time is mandatory once the requisite conditions are satisfied. Section 14 does not extend or provide a fresh period of limitation but merely excludes the time spent in bona fide prosecuting a prior proceeding while ascertaining the date of expiry of the prescribed period.

- **Noted that**, following ***M.P. Steel Corporation v. Commissioner of Central Excise [(2015) 7 SCC 58]* and *Suryachakra Power Corporation Limited v. Electricity Department [(2016) 16 SCC 152],*** though Section 14 of the Limitation Act may not apply *stricto sensu* to proceedings before quasi-judicial tribunals, the principles of Section 14, being founded on the advancement of the cause of justice, would certainly apply to exclude the time taken in prosecuting a prior proceeding which was pursued bona fide and with due diligence but ultimately proved abortive.

- **Observed that**, the OIO was passed on January 3, 2025 and the rectification application was filed well within the period of three months on March 8, 2025 and hence, no negligence, lapse or inaction could be attributed to the Petitioner, thereby establishing due diligence. Further, the material collected by the Petitioner demonstrating that the supplier had belatedly filed GSTR-1 before the cut-off date evidenced due care and attention on his part, thereby establishing good faith within the meaning of Section 2(h) of the Limitation Act.

- **Held that**, with all the conditions of Section 14 of the Limitation Act having been satisfied, the period between March 8, 2025 (the date of filing of the rectification application) and April 24, 2025 (the date of its rejection), both days inclusive i.e., forty-eight days, is to be excluded while computing the period of limitation for filing the appeal. Consequently, the limitation for filing the appeal stood extended up to June 20, 2025 and the appeal filed on May 23, 2025 fell within the condonable period under Section 107(4) of the CGST Act.

- **Held that**, drawing support from ***State of Madhya Pradesh v. Pradeep Kumar [(2000) 7 SCC 372]***, the omission to file an application for condonation of delay along with the appeal is a curable defect and where an appeal is presented within the condonable period without such an application, the Appellate Authority is cast with an obligation to afford at least one opportunity to the appellant to explain the delay by showing sufficient cause, before dismissing the appeal as time-barred.

- **Directed that**, the Impugned Order is set aside and quashed and the matter is remanded back to the Appellate Authority to put the Petitioner on notice and provide a reasonable opportunity to file an application for condonation of delay, and if such application is filed and the explanation is found satisfactory, to decide the application and thereafter, the appeal in accordance with law.

<u>Our Comments:</u>

Section 107(1) of the CGST Act provides that any person aggrieved by a decision or order passed by an Adjudicating Authority may prefer an appeal before the Appellate Authority within three months from the date of communication of such decision or order. Section 107(4) of the CGST Act empowers the Appellate Authority to allow presentation of the appeal within a further period of one month, if satisfied that the appellant was prevented by sufficient cause, and no delay beyond such period can be condoned. Section 161 of the CGST Act, which opens with a non-obstante clause, enables any authority to rectify an error apparent on the face of the record in any decision or order, either on its own motion or when such error is brought to its notice by the affected person within three months from the date of issue of such decision or order, subject to an outer limit of six months for carrying out the rectification.

Section 29(2) of the Limitation Act provides that where a special or local law prescribes a period of limitation different from that prescribed under the Schedule to the Limitation Act, the provisions of Sections 4 to 24 of the Limitation Act shall apply only insofar as they are not expressly excluded by such special law. The Hon'ble Supreme Court in ***Singh Enterprises v. Commissioner of Central Excise, Jamshedpur [(2008) 3 SCC 70]*** **and** ***Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited [(2020) 19 SCC 681]*** has consistently held that where a special enactment prescribes an outer limit for condonation of delay, neither the appellate forum nor the constitutional courts can condone the delay beyond such period by invoking Section 5 of the Limitation Act. The present judgment, however, carves out a fine but significant distinction – while Section 5 stands excluded, the principle of Section 14 of the Limitation Act, which mandates exclusion of time spent in bona fide prior proceedings, continues to operate, as it does not enlarge the prescribed period of limitation but only alters the manner of its computation.

The view taken by the Hon'ble Gauhati High Court is in line with the settled position laid down in *M.P. Steel Corporation* (supra), wherein the Hon'ble Supreme Court applied the principles of Section 14 of the Limitation Act to proceedings before quasi-judicial tribunals under the Customs Act, 1962, holding that a litigant who bona fide pursues a remedy before a wrong forum cannot be penalised for no fault of his own. It is pertinent to note that divergent views prevail amongst the High Courts on the broader question of applicability of the Limitation Act to appeals under Section 107 of the CGST Act. The Hon'ble Calcutta High Court in ***S.K. Chakraborty & Sons v. Union of India [MAT 81 of 2022 dated December 1, 2023]*** held that Section 107 of the CGST Act does not expressly exclude the applicability of Section 5 of the Limitation Act and hence, delay beyond one month is condonable. Per contra, the Hon'ble Kerala High Court in ***Penuel Nexus Pvt. Ltd. v. Additional Commissioner (Appeals) [WP(C) No. 15574 of 2023 dated June 13, 2023]*** and the Hon'ble Allahabad High Court in ***M/s Garg Enterprises v. State of U.P. [Writ Tax No. 291 of 2022 dated January 17, 2024]*** held that Section 107 of the CGST Act is a complete code in itself and impliedly excludes the application of Section 5 of the Limitation Act.

This judgment comes as a significant relief to taxpayers who, upon receipt of an adverse order, first pursue the rectification route under Section 161 of the CGST Act and thereby exhaust a substantial part of the limitation period for filing an appeal under Section 107 of the CGST Act. However, it must be borne in mind that the benefit of exclusion under the principle of Section 14 of the Limitation Act is not automatic – the twin conditions of due diligence and good faith in prosecuting the prior proceeding must be demonstrably satisfied, and the prior proceeding must relate to the same matter in issue. Taxpayers would, therefore, be well advised to file rectification applications promptly and maintain proper documentation of the bona fides of such proceedings, and where possible, prefer a protective appeal within the statutory period to obviate any dispute on limitation.

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