Appellate Authority has no power to condone delay in filing appeal beyond the outer limit prescribed under Section 107(4) of the CGST Act

The Hon'ble Orissa High Court in ***M/s. Sri Balaji Metallics Private Limited v. Commissioner of CT & GST, Cuttack and Others [W.P.(C) No. 7208 of 2025 dated March 12, 2026]*** dismissed the writ petition filed against the rejection of a time-barred appeal, thereby holding that where the Assessee itself declared in Form GST APL-01 that the Order-in-Original was communicated to it on the very date of its passing, such declaration constitutes deemed communication of the order triggering the period of limitation under Section 107(1) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**), and once the appeal is filed beyond the maximum condonable period prescribed under Section 107(4) of the CGST Act, the Appellate Authority is denuded of jurisdiction to condone any further delay.

Facts:

M/s. Sri Balaji Metallics Private Limited (**"the Petitioner"**) was subjected to an assessment order dated November 21, 2023 (**"the Impugned Order"**) passed by the Proper Officer under Section 73 of the CGST Act, the summary whereof was issued in Form GST DRC-07.

The Petitioner contended that the Impugned Order was never communicated to it and that it came to know of the same only on June 14, 2024, when its bank account was attached in terms of the order passed by the Proper Officer.

Thereafter, the Petitioner filed an appeal before the Additional Commissioner of CT and GST (Appeal), Rourkela (**"the Appellate Authority"**) along with an application for condonation of delay, contending that the period of limitation prescribed under Section 107(1) of the CGST Act would reckon from the date of communication of the order to the person aggrieved thereby and not from the date of passing of the order, and hence, the limitation ought to run from June 14, 2024.

However, in Form GST APL-01 filed by the Petitioner, it was declared that the Impugned Order dated November 21, 2023 was communicated to the Petitioner on the same day i.e. November 21, 2023.

The Appellate Authority, finding no substance in the stand of the Petitioner, rejected the application for condonation of delay and consequently the appeal itself, on the ground that the appeal was filed beyond the maximum outer cap fixed under Section 107(4) of the CGST Act.

Aggrieved thereby, the Petitioner filed the present writ petition before the Hon'ble Orissa High Court.

Issue:

Whether the Appellate Authority has the power to condone delay in filing an appeal beyond the maximum condonable period prescribed under Section 107(4) of the CGST Act, when the Assessee itself declared in Form GST APL-01 that the order was communicated to it on the date of its passing?

Held:

The Hon'ble Orissa High Court in ***W.P.(C) No. 7208 of 2025*** held as under:

- **Observed that,** Section 107(1) of the CGST Act manifestly indicates that the prescribed period of three months would start from the day when the decision or order is communicated to such person. Thus, the communication of the order is *sine qua non* for ascertaining the period of limitation, and if the appeal is filed within the time stipulated therein reckoning from the date of communication of the order, the same is maintainable and is to be entertained by the Appellate Authority.

- **Noted that,** the Petitioner in Form GST APL-01 itself recorded that the Order-in-Original passed on November 21, 2023 was duly communicated to it on the same day. The moment the Appellant admitted that the order has been communicated in accordance with the provisions contained in the relevant statute or the rules applicable in this regard, it would be deemed to have been so communicated and the period of limitation would start from the said date.

- **Observed that,** Section 107(4) of the CGST Act postulates that the Appellate Authority, if satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the normal period of limitation provided under Section 107(1) of the CGST Act, can condone the delay only for a further period of one month.

- **Held that,** once the power to condone the delay is abridged and/or restricted by providing an outer cap, the authority cannot exercise such power beyond such outer limit set forth in the statutory provisions. Since the appeal was filed beyond the outer limit set forth in Section 107(4) of the CGST Act, the power to condone the delay beyond the said period has been impliedly taken away by the statute.

- **Held that,** there is no infirmity and/or illegality in the decision of the Appellate Authority in refusing to condone the delay or entertain the appeal, and the contention of the Petitioner that it was prevented by sufficient cause is unacceptable in view of the outer limit set forth in the statutory provisions. Accordingly, the writ petition was dismissed.

Our Comments:

Section 107 of the CGST Act governs "Appeals to Appellate Authority". Section 107(1) of the CGST Act provides that any person aggrieved by any decision or order passed under the CGST Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to the prescribed Appellate Authority within three months from the date on which the said decision or order is *communicated* to such person. Further, Section 107(4) of the CGST Act empowers the Appellate Authority, on being satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period, to allow the appeal to be presented within a further period of one month only. Therefore, the statutory scheme prescribes a total outer limit of four months (three months plus one month of condonable period), beyond which the Appellate Authority has no jurisdiction to entertain an appeal.

The view taken by the Hon'ble Orissa High Court is in consonance with the settled position of law laid down by the Hon'ble Supreme Court in ***Singh Enterprises v. Commissioner of Central Excise, Jamshedpur [(2008) 3 SCC 70],*** wherein, in the context of the pari materia provision of Section 35 of the Central Excise Act, 1944, it was held that the Appellate Authority being a creature of the statute cannot condone the delay beyond the statutorily permissible period, and the application of Section 5 of the Limitation Act, 1963 stands excluded by the complete code prescribed under the special statute.

Similarly, the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada v. Glaxo Smith Kline Consumer Health Care Limited [Civil Appeal No. 2413 of 2020 dated May 06, 2020]*** held that the High Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought not to entertain a challenge to an assessment order after the statutory period of limitation for filing an appeal, including the condonable period, has expired, as doing so would render the legislative scheme of limitation otiose.

Further, the Hon'ble Kerala High Court in ***Penuel Nexus Pvt. Ltd. v. The Additional Commissioner Headquarters (Appeals) [WP(C) No. 15574 of 2023 dated June 13, 2023]*** and the Hon'ble Allahabad High Court in ***M/s. Yadav Steels v. Additional Commissioner and Another [Writ Tax No. 975 of 2023 dated February 15, 2024]*** have held that the CGST Act is a special statute and a self-contained code in itself, and Section 107 thereof impliedly excludes the applicability of Section 5 of the Limitation Act, 1963. Hence, the Appellate Authority cannot condone the delay beyond the period of one month prescribed under Section 107(4) of the CGST Act.

However, a contrary view has been taken by the Hon'ble Calcutta High Court in ***S.K. Chakraborty & Sons v. Union of India [MAT 81 of 2022 dated December 01, 2023]***, wherein it was held that Section 107 of the CGST Act does not expressly or impliedly exclude the applicability of Section 5 of the Limitation Act, 1963, and therefore, the Appellate Authority is competent to condone the delay even beyond the period of one month prescribed under Section 107(4) of the CGST Act in deserving cases. Thus, the issue is not free from divergence of judicial opinion and may ultimately require an authoritative pronouncement by the Hon'ble Supreme Court.

Another significant takeaway from the present ruling relates to the binding effect of the declaration made in Form GST APL-01. The Hon'ble Court treated the date of communication declared by the Assessee itself in the appeal memo as deemed communication of the order, which triggered the period of limitation, and rejected the plea that knowledge was acquired only upon attachment of the bank account. Therefore, taxpayers must exercise utmost care and caution while declaring the date of communication of the order in Form GST APL-01, as any admission made therein would bind the taxpayer. It is also advisable for taxpayers to regularly monitor the GST common portal, since orders uploaded on the portal constitute a valid mode of service under Section 169 of the CGST Act, and belated knowledge of such orders would not extend the period of limitation for filing an appeal.

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