

M/S Dial For Cool v. State Of U.P. And 2 Others

WRIT TAX No. 1338 of 2022 | Decision: 2023-11-30 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:226083

Court No. - 37

Case :- WRIT TAX No. - 1338 of 2022

Petitioner :- M/S Dial For Cool Respondent :- State Of U.P. And 2 Others Counsel for Petitioner :- Prathamesh Upadhyay Counsel for Respondent :- C.S.C.

Hon'ble Ajay Bhanot,J.

1. Heard Shri Prathamesh Upadhyay, learned counsel for the petitioner and Shri Bipin Kumar Pandey, learned Additional Chief Standing Counsel for the respondents-State.
2. The GST registration of the petitioner was cancelled by the authority/Assistant Commissioner, Noida Sector-10/respondent No.3 in the first instance by the order dated 04.03.2022. The petitioner carried the said order in appeal before the learned appellate authority/Additional Commissioner, Grade-2 (Appeal)-Ist, State Tax, Noida.
3. The petitioner has assailed the order dated 28.09.2022 passed by the learned appellate authority/Additional Commissioner, Grade-2 (Appeal)-Ist, State Tax, Noida, wherein the learned appellate authority has rejected the appeal filed by the petitioner under Section 107 of the CGST Act on the footing that the appeal was barred by limitation. The impugned order references the provisions of Section 107 of the Act and notices that the period of limitation of three months has been provided for filing the appeal. In this case the appeal was filed after a period of four months and was accordingly barred by limitation.
4. Section 107 of the Central Goods and Services Tax Act, 2017 pari materia with Section 107 of the Uttar Pradesh Goods and Services Tax Act are relevant part which provide for limitation and the same are extracted hereunder:
"Section 107. Appeals to Appellate Authority-

(1) Any person aggrieved by any decision or order passed under this 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 such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month."

5. Section 169 of the Act provides for manner of service of notice, decision/order or summons which is relevant to the controversy is reproduced hereunder:

"Section 169. Service of notice in certain circumstances-

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

6. The provisions of Section 107 of the CGST Act contemplates that the period of limitation will commence from the date the order is "communicated to such person". The interpretation of the aforesaid phrase "communicated

to the person" which is the start point of limitation, arose for consideration before this Court in S/S Patel Hardware v. Commissioner, State G.S.T. and others (Writ Tax No.1388 of 2018). S.D.Singh J. while examining the provision held as under:

"8. Keeping in mind the fact that the delay in filing the appeal may not be condoned beyond the period of one month from the expiry of period of limitation, the phrase "communicated to such person" appearing in Section 107(1) of the Act commend a construction that would imply that the order be necessarily brought to the knowledge of the person who is likely to be aggrieved. Unless such construction is offered, the right of appeal would itself be lost though a delay of more than a month would in all such cases be such as may itself not warrant such strict construction."

7. Similarly, the observations of Pankaj Bhatia J. in Singh Traders v Additional Commissioner Grade-2 and others (Writ Tax No.661 of 2020) regarding satisfaction of service in accordance with the provisions of Section 169 also become applicable to the facts of this case.

8. The mandatory prerequisites for reckoning the start point of period of limitation are these. The authority has to make a finding in regard to the mode of copy of the order and also whether service upon the concerned person is complete. Secondly the authority has to record its satisfaction that the order has been "communicated to the assessee/person".

9. The impugned order does not reference the mode of service of the order nor does it record its satisfaction of service in the order. The finding that the order was "communicated to the assessee/person" is also absent. Learned tribunal was misdirected in law, inasmuch as, it neglected to record its satisfaction of the mandatory prerequisites for triggering the clock of limitation.

10. There is another aspect which needs to be adverted to. The authority below while deciding the issue of cancellation of registration of a dealer is liable to be guided by holdings of the Madras High Court in M/s.

Pearl and Co. v. The Commissioner of Commercial Taxes and another, (W.P.(MD) No.19127 of 2022 and W.M.P. (MD) No.13962 of 2022) wherein the consequences of cancellation of registration of a dealer and the approach of the revenue while considering such matters was set out as follows:

"6.Considering the submission and perusal of the materials, this Court is of the view that restoring the registration would not cause any harm to the department on the other hand it would be beneficial for the state to earn revenue. Further, in the case of Tvl.Suguna Cutpiece Vs Appellate Deputy Commissioner (ST) (GST) and others (W.P.Nos. 25048, 25877, 12738 of 2021 etc.. batch), dated 31.01.2022. There some of the petitioner filed an appeal beyond the period of limitation either for filing application for revocation of cancellation, while some of them had directly filed a writ petition against the order cancelling the registration. While some of them filed appeal beyond the statutory period of limitation, there was further delay in filing the writ petition. However, considering the over all facts and circumstances of the case, it was held that no useful purpose will be served by keeping those petitioners out of the Goods and Services Tax regime, as such assessee would still continue to do business and supply goods/services. By not bringing them back to the Goods and Services Tax fold/regime, would not further the interest of the revenue. Relief was granted under similar circumstances with the following directions:

"216. Since, no useful will be served by not allowing persons like the petitioners to revive their registration and integrate them back into the main stream, I am of the view that the impugned orders are liable to be quashed and with few safeguards.

217. There are adequate safeguards under the GST enactments which can also be pressed against these petitioners even if their registration are revived so that, there is no abuse by these petitioners and there is enough deterrence against default in either paying tax or in complying with the procedures of filing returns.

218. Further, the Government requires tax to meet its expenditure. By not bringing these petitioners within the GST fold, unintended

privilege may be conferred on these petitioners unfairly to not to pay GST should they end supplying goods and/or services without registration. For example, a person renting out an immoveable property will continue to supply such service irrespective of registration or not.

219. Therefore, if such a person is not allowed to revive the registration, the GST will not be paid, unless of course, the recipient is liable to pay tax on reverse charge basis. Otherwise, also there will be no payment of value added tax. The ultimate goal under the GST regime will stand defeated. Therefore, these petitioners deserve a right to come back into the GST fold and carry on their trade and business in a legitimate manner.

220. The provisions of the GST Enactments and the Rules made there under read with various clarifications issued by the Central Government pursuant to the decision of the GST Council and the Notification issued thereunder the respective enactments also make it clear, intention is to only facilitate and not to debar and de-recognised assesses from coming back into the GST fold.

11. The impugned order dated 28.09.2022 passed by the respondent No.2/learned appellate authority is liable to be set aside and is set aside.

12. The matter is remitted to the learned appellate authority for fresh adjudication in accordance with law.

13. The learned appellate authority is directed to decide the controversy in light of the observations made in this judgement and upon giving an opportunity of hearing to the petitioner.

14. The entire exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order.

15. The writ petition (tax) is allowed.

Order Date :- 30.11.2023 Ashish Tripathi

2023-12-21T10:35:41+0530 High Court of Judicature at Allahabad