

(2023) 11 PAT CK 0021

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15687 Of 2023

M/S Micro Zone

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Goods and Services Tax Act, 2017 — Section 73, 74, 107, 107(1), 107(4)

Citation : (2023) 11 PAT CK 0021

Hon'ble Judges : K. Vinod Chandran, CJ;Rajiv Roy, J

Bench : Division Bench

Advocate : Anurag Saurav, Dr. K.N. Singh

Final Decision : Allowed

Judgement

1. The above writ petition challenges an order in an appeal filed under the Bihar Goods and Services Taxes Act, 2017, for brevity, (BGST Act), which was dismissed on the ground of delay. Section 107 of the BGST Act provides for three months time to file an appeal and a further time of one month in which an appeal could be filed with satisfactory explanation, for the delay occasioned.

2. The appeal filed in the above case, rejected by Annexure-P/5 was beyond even the one month period provided under Section 107 of the BGST Act. This Court and the Hon'ble Supreme Court have held that when there is a specific period provided in the statute, within which period a delayed appeal could be filed; then neither the Appellate Authority nor this Court under Article 226 of the Constitution of India could condone the delay beyond the period provided.

3. The Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)) extended the time for filing appeal against an order passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the BGST Act. This in fact extends the period for filing appeal beyond one month period as provided under Section 107(4) of the

BGST Act, on following the special procedure prescribed under the said Notification.

4. The special procedure prescribed under the Notification is seen from paragraph no. 2 to 6 which are extracted hereunder:-

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub- section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

5. Hence an appeal against an order under Section 73 of 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing.

6. However, the maintainability of the appeal is further regulated by paragraph no. 3 which require that the admitted tax, interest, fine, fee and penalty arising from the impugned order is paid up along with a sum equal to 12.5% of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees; out of which 12.5%, 20% should have been paid by debiting from the Electronic Cash Ledger. The further conditions in

paragraph no. 4 to 6 also shall be applicable.

7. In the present case, the appeal was filed and was dismissed by the first Appellate Authority. In such circumstances, it is only proper that the appeal be restored to the files of the Authority subject to the conditions under paragraph no. 3 being satisfied.

8. Hence the petitioner would be entitled to satisfy paragraph no. 3 of the aforesaid Notification by paying up the deficient amounts as would be required to maintain the appeal under the notification.

9. We specifically says the deficient amount, since on filing the appeal 10% of the amount of tax in dispute arising from the order impugned would/ought to have been remitted.

10. We set aside the impugned order at Annexure-P/5 and direct the assessee to satisfy the aforesaid conditions before the time stipulated in Notification; i.e. 31.01.2024, in which event, the appeal would be taken up and considered on merits. And if the conditions are not satisfied, then necessarily the appeals ought to be rejected or would stand rejected.

11. In this context, noticing the Notification, we also make it clear that wherever we have rejected the writ petitions filed against orders; rejecting appeals for reason of delay being beyond that prescribed under Section 107(4) of the BGST Act; the assessee would be entitled to invoke the said remedy de hors the orders of this Court and avail of the benefit of Notification aforementioned, subject to the conditions therein being satisfied. The Commissioner, State Taxes, Government of Bihar shall issue necessary instructions to the officers empowered under the Act to carry out assessment and also consider appeals about the orders of this Court, which permits appeals to be restored on the conditions in this Notification being scrupulously complied with even in cases where this Court has rejected the writ petitions filed against the dismissal of the delayed appeals, solely on the ground of delay occasioned.

12. We allow the writ petition on the above terms.