


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 1437/2024

M/s Thekedar Nand Lal Sharma, Through Its Proprietor Nand Lal S/o Shri Ramcharan, Aged 58 Years, R/o Chila Chaund, Dholpur (Raj.). Lease Holder Of Mining Lease Situated At District Dholpur.

----Petitioner

Versus

1. State of Rajasthan through Principal Secretary, Department of Finance, Secretariat, Jaipur.
2. Commissioner, State Goods And Service Tax, Kar Bhawan, Ambedkar Circle, Jaipur.
3. Assistant Commissioner, Ward No. II, Headquarter Badi, Circle Dholpur-Bharatpur, Rajasthan.

----Respondents

For Petitioner(s)	:	Mr. R.C. Agarwal with Ms. Neetu Bhansali
For Respondent(s)	:	Mr. Umang Gupta with Ms. Shivalika Srivastava & Ms. Krati Gaur

**HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MRS. JUSTICE SHUBHA MEHTA**

Order

30/04/2024

1. By this writ petition, the petitioner has called in question the correctness and validity of show cause notice dated 28.10.2022 issued by Respondent No. 3 under Section 74 of the Rajasthan Goods and Services Tax Act, 2017 (hereinafter referred to as 'the RGST Act, 2017')/the Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'the CGST Act, 2017') for financial year 2018-19, as also order dated 02.03.2023 passed by Respondent No. 3 by which the petitioner has been directed to deposit the

amount of Rs. 4,84,020/- towards service tax on royalty, interest and penalty.

2. Though number of grounds have been urged in the writ petition as also before this Court to assail the correctness and validity of aforesaid show cause notice as also order dated 02.03.2023, learned counsel for the respondents, appearing on advance copy, brought to the notice of the Court that after the proceedings under Section 74 of the RGST Act, 2017/the CGST Act, 2017 were drawn against the petitioner which culminated in order dated 02.03.2023 resulting in levy of tax liability along with interest and penalty, the petitioner did not file any appeal either within the period of limitation as prescribed under Section 107 of the RGST Act, 2017/ the CGST Act, 2017 or within the maximum period thereafter which could be condoned under the power to condone the delay in filing of the appeal. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of "*Assistant Commissioner (CT) LTU, Kakinada & Ors. vs. Glaxo Smith Kline Consumer Health Care Limited*", **(2020) 19 SCC 681**, present writ petition is not maintainable and liable to be dismissed.

3. In the case of "*Glaxo Smith Kline Consumer Health Care Limited*" (supra), the question which arose for consideration was whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by law of limitation. On facts, that was a case where the assessee did not take recourse to remedy of appeal even though he was duly

served with the order of assessment within the statutory period. Without challenging the order in appeal, respondent therein filed an application under Rule 60 of the Andhra Pradesh Value Added Tax Rules, 2005, highlighting certain errors in raising the demand based on incorrect turnover reported by the assessee. The application having been rejected, an appeal was filed. Finally, the assessee filed an appeal before the Appellate Authority against the assessment order. The appeal against the assessment order was dismissed being barred by limitation and also because no sufficient cause was made out. Thereafter, the assessee filed a writ petition in the High Court seeking quashment and setting aside of assessment order on various grounds including the ground that it was contrary to law, without jurisdiction and in violation of principles of natural justice. Prayer was also made to carry out fresh assessment. The writ petition was allowed quashing and setting aside the order of assessment relegating the matter for reconsideration. That order came to be challenged by filing an appeal, mainly on the ground that the assessee having failed to avail the statutory remedy of appeal within the prescribed time and the assessee having failed to satisfactorily explain the delay in filing the appeal, the High Court ought not to have entertained the writ petition at the instance of such person, more so because the respondent had allowed the order passed by the Appellate Authority rejecting the appeal on the ground of delay, to become final.

4. After detailed consideration, the Hon'ble Supreme Court arrived at the conclusion that in such circumstances, the writ

petition was not maintainable and was liable to be dismissed. It was held thus:-

"22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

23. Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21.6.2017 although it is admitted that the same was served on the authorised representative of the respondent on 22.6.2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12.9.2017 for and on behalf of respondent, without filing an appeal and without any demur - after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8.5.2018 and pursued the same in appeal, which was rejected on 17.8.2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24.9.2018 without disclosing the date on which the respondent in fact became aware about the existence of the assessment

order dated 21.6.2017. On the other hand, in the affidavit of Mr. Sreedhar Routh, Site Director of the respondent company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the Company became aware about the irregularities committed by its erring official (Mr. P. Sriram Murthy) in the month of July, 2018, which presupposes that the respondent must have become aware about the assessment order, at least in July, 2018. In the same affidavit, it is asserted that the respondent Company was not aware about the assessment order, as it was not brought to its notice by the employee concerned due to his negligence. The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the concerned employee (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner. Be that as it may,

since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all."

5. Having examined the issue with regard to maintainability of the writ petition under Article 226 of the Constitution of India, it was concluded as below:-

"25. Taking any view of the matter, therefore, the High Court ought not to have entertained the subject writ petition filed by the respondent herein. The same deserved to be rejected at the threshold."

6. Present is a case where the petitioner did not even file appeal and allowed the order passed in assessment proceedings to become final and thereafter approached this Court by filing writ petition seeking to challenge the determination of tax, interest and penalty by the competent authority vide order dated 02.03.2023. Present is not a case where the order under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 levying tax along with interest and penalty was passed without giving any opportunity of hearing to the petitioner. Even according to the petitioner, he was issued show cause notice and thereafter, impugned order was passed. In the writ petition, no plausible explanation has been offered as to why the petitioner did not take recourse to the remedy of statutory appeal. It, therefore, appears that the petitioner consciously did not choose to take recourse to the remedy of appeal as provided under Section 107 of the RGST Act, 2017/the CGST Act, 2017, but waited for the expiry of the

period of limitation for filing appeal as also the maximum period of delay which could be condoned in the exercise of powers conferred upon the appellate authority under the provisions of Section 107 of the RGST Act, 2017/ the CGST Act, 2017.

7. Having not preferred an appeal, the petition in the present case, in view of the decision of Hon'ble Supreme Court in the case of "Glaxo Smith Kline Consumer Health Care Limited" (supra), is not maintainable.

8. Writ petition is, accordingly, dismissed. Stay application stands disposed.

(SHUBHA MEHTA),J

(PANKAJ BHANDARI),J