CGHC010361922023 2026:CGHC:30390

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 260 of 2023

- M/s Rakesh Kumar Jain Son Of Late Shri Bhagchand Jain, Aged About 59 Years Police Station - Road, Aklatara, District - Janjgir-Champa, Chhattisgarh.

... Petitioner(s)

versus

1. Union Of India Through The Secretary, Ministry Of Finance (Department Of Revenue) New-Delhi,
2. Commissioner (Appeals) Central Excise And Service Tax, Cgst Building, Dhamtari -Road, Tikrapara, Raipur, Chhattisgarh
3. Additional Commissioner Of Cgst, Central Excise And Service Tax, CGST Building, Dhamtari-Road, Tikrapara, Raipur, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Mr. Somnath Verma, Advocate
For Respondents	:	Mr. Maneesh Sharma, Advocate

Hon'ble Shri Rakesh Mohan Pandey, Judge

Judgment on Board

17.7.2026

1. The petitioner has filed this petition assailing the order passed by the Commissioner (Appeals), CGST and Central Excise, Raipur (C.G.) [hereinafter to be referred as ‘Appellate Authority’] dated 11.8.2023 whereby the Appellate Authority dismissed the appeal on the ground of delay.

2. Facts of present case are that petitioner is a railway contractor who accepted tender and was given work-order for Transportation services for Indian Railway. A formal show-cause notice was issued by Additional Commissioner, CGST and Central Excise against on 17.10.2018 whereby petitioner was asked to furnish the details of payment of service tax. Thereafter, Additional Commissioner, CGST and Central Excise passed order-in-original on 29.3.2022 whereby petitioner was directed to deposit Rs. 1,54,54,496/- with interest towards service tax according to Section 73(1) of the Finance Act, 1994 [hereinafter to be referred as 'Finance Act'] read with Section 174 of CGST Act, 2017. Petitioner preferred appeal before the Appellate Authority on 16.8.2022. The Appellate Authority vide order dated 11.8.2023 rejected the appeal on the ground of delay.

3. Mr. Somnath Verma, learned counsel for the petitioner submits that petitioner suffered from Corona-Virus infection and took two months to return to normalcy which caused the delay of 1 month and 11 days and the appellate authority ought to have taken sympathetic view while dismissing the appeal on technical ground. He further submits that petitioner had preferred application for condonation of delay in support of his appeal but the same was neither considered nor rejected while dismissing the appeal on the ground of delay. He also submits that the procedure adopted by the appellate authority is in violation to the principles of natural justice as well as against the proviso of Sub-

Section (3) of Section 85 of the Finance Act and Section 35A of Central Excise Act, 1944 [hereinafter to be referred as 'Central Excise Act']. In support of his argument, he has placed reliance on the judgments rendered by the Hon'ble Division Bench of Calcutta High Court in the matter of ***Kajal Dutta Versus Assistant Commissioner of State Tax***[1] and High Court of Chhattisgarh in the matter of ***Hidayatullah National Law University, Raipur Versus National Faceless Assessment Center, Income Tax Department, Raipur***[2]. He prays to quash the impugned appellate order dated 11.8.2023.

4. On the other hand, Mr. Maneesh Sharma, learned counsel appearing for the respondents submits that period of limitation prescribed under the Central Excise Act is 60 days and the Commissioner (Appeals) if satisfied that the appellant was prevented by sufficient cause from presenting the appeal within period of 60 days, may allow it to be presented within a further period of 30 days. He further submits that in the present case, order-in-original was passed by Additional Commissioner, CGST and Central Excise on 29.3.2022 and the same was communicated to the petitioner on 4.4.2022 but petitioner only approached the Commissioner (Appeals) on 16.8.2022 with delay of one month and 11 days. He also submits that even if the further limitation period of 30 days is included, the appeal was barred by 11 days and there is provision in the Central Excise Act to

1. **AIROnLine 2023 CAL 388**
2. **AIROnLine 2025 CHH 220**

condone a delay of more than 60 + 30 days. He contends that appellate authority in its order dated 11.8.2023 has considered the application for condonation of delay and held that the appellant ought to have preferred the appeal on or before 3.7.2022 excluding the condonation period of one month which the appellate authority could have condoned. He further contends that providing a hearing to the petitioner merely because principles of natural justice were missed, the procedure would be a mere ritual or a futile exercise as the outcome would have been the same anyway. He has placed reliance on the judgment rendered by the Hon'ble Supreme Court in the matter of ***Assistant Commissioner (CT) LTU, Kakinada and Others Versus Glaxo Smith Kline Consumer Health Care Limited***[3] and Hon'ble Division Bench in the matter of ***M/s Brandavan Food Products Versus Commissioner (Appeals), Central & State Goods and Service Tax and Another*** passed in **Writ Appeal No. 262 of 2019**. He also contends that this writ petition is misconceived and liable to be dismissed.

5. Heard learned counsel appearing for the parties at length, considered their rival submissions made herein above and perused the documents placed on the file with utmost circumspection

6. The judgments quoted by Mr. Somnath Verma are summarized herein below :-

3. **(2020) 19 SCC 681**

- In **Kajal Dutta** (supra), Hon'ble Division Bench of Calcutta High Court exercised its discretionary writ jurisdiction under Article 226 to condone an appeal delay under Section 107 of the GST Act due to medical reasons. However, the judgment clearly speaks that '<u>this order shall not be treated as a precedent and has been passed considering the peculiar facts and circumstances of the case</u>.' Relevant paragraphs 3 to 5 reads as under :-

> **3.** The correctness of the stand taken by the appellant that he was sick and unable to take steps to file the appeal within the period of limitation is not disputed by the revenue. However, the appellate authority was of the opinion that the period of one month beyond the statutory period of limitation is available to the said authority, which expired on 30 June, 2022 and the appeal was presented only on 17 August, 2022 and therefore, the appeal is barred by the law of limitation. It is true that in terms of Section 107(1) read with Section 107 (4) of the G.S.T. Act, the time limit for preferring the appeal beyond the period of three months is 30 days, which is a grace period. However, the statute does not state that beyond the said date, the appellate authority cannot exercise jurisdiction. It is not a case that deliberately the appellant had presented the appeal beyond the condonable period. Therefore, while exercising jurisdiction under Article 226 of the Constitution this Court can examine the factual circumstances and grant appropriate relief as the appellate remedy is a very valuable remedy since the appellate authority can re-appreciate the factual position. Thus, for such reason, we are inclined to exercise discretion.
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> **4.** In the result, the appeal is allowed, the order passed in the writ petition is set aside and consequently, the writ petition is allowed and the order passed by the appellate authority dated 17 August, 2022 is set aside and the

> delay in filing the appeal before the appellate authority is condoned and the appellate authority is directed to consider and decide the appeal on merits in accordance with law after affording opportunity of personal hearing to the authorised representative of the appellant.
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> **5.** We make it clear that this order shall not be treated as a precedent and has been passed considering the peculiar facts and circumstances of the case.

- In **Hidayatulla National Law University** (supra), the core dispute revolved around natural justice violations and eligibility for tax exemption as an educational institution. In that scenario, co-ordinate Bench exercised its writ jurisdiction to correct a fundamental procedural illegality and breach of natural justice by the revenue authority. However, it did not deal with overriding an explicit, non-extendable statutory limitation period embedded in a tax code like Section 35. Relevant paragraph 23 reads as under :-

> **23**.From perusal of the records, it is clear that the impugned order dated 19.12.2023 was passed without affording opportunity of hearing to the petitioner and the same were not served to the petitioner either physically or electronically. The petitioner originally challenged the order of the Assessment Officer on 09.01.2019 but respondent No.2 has passed the order on 29.12.2023 after a lapse of four years. In the instant case, the petitioner has moved a rejoinder before the Appellate Authority requesting for a personal hearing but the said request was not considered by the Appellate Authority. If the application/request was made for personal hearing by the petitioner before the Appellate Authority, the Income Tax authority

ought to have allowed the said application by arranging for video conferencing argument. At least in the instant case, it stands established the request from the petitioner was made before the Appellate Authority but the Appellate Authority did not give opportunity of hearing to the petitioner. Therefore, this Court is of the considered view that there is a violation of principle of natural justice and if the defect of principle of violation of natural justice has occurred in the initial stage of proceedings, it cannot be cured at the stage of appeal. No doubt, the petitioner has a right to avail the statutory appellate remedy but when the impugned order was passed by the respondent No.2 in violation of principle of natural justice, it cannot be alleviated.

7. Below is a summary of the judgments cited by Mr. Maneesh Sharma :-

- In **Glaxo Smith Kline** (supra), Hon'ble Supreme Court clearly held that when a tax statute provides a strict, non-extendable outer limitation period for filing an appeal, the High Court under Article 226 cannot do what the statutory appellate authority cannot do. Relevant paragraphs 22 to 26 read as under :-

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[1] 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 employee concerned (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.

24. Reverting to the contention that the respondent having failed to assail the order passed by the appellate authority, dated 25-10-2018 rejecting the application for condonation of delay, the assessment order passed by the Assistant Commissioner, dated 21-6-2017 stood merged, need not detain us in view of the exposition of this Court in Raja Mechanical Co. (P) Ltd. v. CCE29. It is well settled that rejection of delay application by the appellate forum does not entail in merger of the assessment order with that order.

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.

26. Accordingly, we allow this appeal and set aside the impugned judgment and order passed by the High Court and dismiss the writ petition. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

- In **M/s Brandavan Food Products** (supra), Hon'ble Division Bench held that High Courts cannot exercise writ jurisdiction under Article 226 to condone delay or entertain a challenge on merits once the absolute statutory outer ceiling for filing an appeal has expired. Relevant paragraph 20 reads as under :-

20. After a threadbare analysis of the provisions of law and the precedents, it was declared in categorical terms by the 'three member Bench' that, once the period of limitation is specifically prescribed in a statute and stipulates the maximum period/extent of delay which can be condoned, it cannot be condoned by the Apex Court even in exercise of the power under Article 142 of the Constitution of India. Having said so, the Appellants cannot be heard to say that the High Court is still having power to condone the delay beyond the prescribed extent under the statute, by invoking the power under Article 226 of the Constitution, which in fact will be amounting to re-writing the law and contrary to the verdict passed by the Apex Court, which is having a binding effect all over India in view of Article 141 of the Constitution of India. There is no answer from the part of the Appellants to the law declared by the 'three member Bench' of the Apex Court in Oil and Natural Gas Corporation Ltd. (supra) but for stating that the said judgment is not applicable, despite the fact that it has been rendered with reference to the judgments sought to be relied on by the Appellant, as discussed above.

8. Bearing in mind the aforesaid factual position and the legal principles established by the Apex Court, we will now advert to the facts of the case.

9. In the present case, order-in-original was passed against the petitioner on 29.3.2022 and same was communicated to the petitioner on 4.4.2022. However, petitioner preferred the appeal before the appellate authority on 16.8.2022 with delay of one month and 11 days and application for condonation of delay was also moved. It is admitted position that the appeal was not filed by the petitioner before the Commissioner (Appeals) within 60 days of the order of the Assessing Authority. It was further not filed within the additional 30 days for which power of condonation has been vested in the Commissioner (Appeals) in terms of the proviso of Section 35(1) of Central Excise Act. Beyond those period of 30 days, the statute does not permit any kind of condonation to be allowed by the Commissioner (Appeals). Therefore, if the appeal of the petitioner herein was presented after the 30th day i.e. beyond the extended period of limitation it was not condonable. The Commissioner (Appeals) was forced by law to dismiss the appeal as being time barred.

10. The afore-stated pronouncement of the Hon'ble Supreme Court also makes it clear that when a tax statute provides a strict, non-extendable outer limitation period for filing an appeal, the High Court under Article 226 cannot do what the statutory appellate authority cannot do. Furthermore, providing an opportunity to the petitioner to explain the causes of delay before the appellate authority would be a mere ritual or a futile exercise as the outcome would have been the same anyway since under Section 35(1) of the Central Excise Act, the statutory limit is 60 days, plus an outer condonable cap of 30 days (total 90 days) and if an appeal is filed after 90 days, the appellate authority loses jurisdiction to condone the delay.

11. Keeping in view the aforesaid settled legal position coupled with the peculiar facts and circumstances of the case, in my opinion, Commissioner (Appeals) rightly dismissed the appeal on the ground of delay and no case is made for interference.

12. In result, this writ petition is dismissed.

13. No order as to costs.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

Ajinkya/Preeti