Case Citation: (2026) taxcode.in 1268 HC

2026:AHC-LKO:38256-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW
WRIT TAX No. - 715 of 2026

M/S Mishra Security Services Thru. Proprietor Smt. Sunita Mishra,

.....Petitioner(s)

Versus

State Of U.P. Thru. Addl. Chief Secy. State Tax Lko. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Apoorv Dev, Prashant Kumar Singh
Counsel for Respondent(s)	:	C.S.C.

A.F.R.

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

1. Heard learned counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner has sought for the following substantial reliefs:-

> *" I. Issue a writ, order or direction in the nature of certiorari quashing the Impugned Assessment Order dated 04.06.2025 (ANNEXURE-1) passed by the Respondent No. 3, having been passed without jurisdiction;*
>
> *II. Issue a writ, order or direction in the nature of certiorari quashing the Impugned Notice dated 17.03.2025 (ANNEXURE-2) having been passed/issued without jurisdiction.*
>
> *III. Issue a writ, order or direction in the nature of prohibition restraining Respondents and/or officers of the UP GST department from taking any coercive action against the Petitioner, in any manner, in respect of the Impugned Order dated 04.06.2025(ANNEXURE-1)."*

3. After hearing learned counsel appearing on behalf of the parties and upon perusal of the records, we are of the view that since the petitioner had filed a reply to the show cause notice dated 17.03.2025

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and pursuant to the said reply was also granted an opportunity of hearing, therefore, there is no question of any interference by this Writ Court under Article 226 of the Constitution of India, as apparently neither any jurisdictional error nor violation of principles of natural justice has been substantiated by the learned counsel for the petitioner.

4. Further more, it is to be seen that the petitioner has come too late in the day before the Writ Court, as the show cause notice and the subsequent assessment order has been passed almost a year ago on 04.06.2025.

5. It is further seen that the petitioner had earlier filed a writ petition in January, 2026, which was also beyond time, wherein the writ petition was dismissed as withdrawn with liberty to file a fresh petition on the self same cause of action with better particulars. It is clear that the Court did not go into the merits of the case and/or the question of limitation in the first round of litigation.

6. We are rather surprised and are unable to countenance as to how can the petitioner file the present writ petition at this belated stage, merely to bypass the limitation prescribed for filing a statutory appeal under Section 107(1) of the GST Act. It is to be noted that the said Act provides for filing an Appeal within three months of communication of order sought to be challenged, with a further window of one month as per Section 107(4) of the Act, in case sufficient cause is shown to the satisfaction of the authority. We need not burden this order by the settled law that the prescribed limitation is to be strictly followed in Tax Laws, suffice to say that the Hon'ble Supreme Court in several judgments including the judgment in ***Singh Enterprises v. C.C.E., Jamshedpur, (2008) 221 ELT 163 (S.C.)*** has held that under Section 35 of the Central Excise Act, the delay cannot be condoned beyond what is prescribed under the Central Excise Act as the language of the said section specifically provides for condonation of delay of additional 30 days only. Section 85 of the Act is in *pari materia* with the above section. One may examine the Supreme Court judgment in ***Singh Enterprise's (supra)*** wherein the Supreme Court held as follows:—

"*8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."*

7. Furthermore, in ***Commissioner of Customs and Central Excise v. Hongo India Private Limited, (2009) 5 SCC 791,*** the Supreme Court has held as under:—

"*31. In this regard, it is useful to refer to a recent decision of this Court in* Punjab Fibres Ltd. *[(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following* Singh Enterprises *v.* CCE *[(2008) 3 SCC 70] concluded that:* (Punjab Fibres Ltd. case *[(2008) 3 SCC 73], SCC p. 75, para 8)*

> "*8.… the High Court was justified in holding that there was no power for condonation of delay in filing reference application.?*
>
> *32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."*

8. Apparently, the limitation for filing a statutory appeal having been lapsed, the petitioner has filed the present writ in the nature of Appeal, as the submission of the learned counsel for the petitioner has been camouflaged to agitate that ingredients of Section 74 of the GST Act has not been met in the show cause notice or the assessment order, which according to this Court is a ground, which was very much available to the petitioner immediately on the issuance of show cause notice on 04.06.2025. We may note that expeditious adjudication of issue is a hallmark of Tax laws as we find that as per Section 107(12) of the Act, any appeal before the authority is to be decided within a period of one year.

9. However, we find that in the present matter the petitioner had been a fence sitter and has not been diligent in pursuing his rights and has filed the present writ petition after one year of the issuance of the show cause notice and most importantly when considerable time has lapsed for filing of an appeal as has been specifically prescribed under law. It is settled principles of law that one cannot do indirectly which one cannot do directly (*quando aliquid prohibetur ex directo, prohibetur et per obliquum*.) and in any case, law does not help and/or come in rescue to a person, who sleeps over his own rights.

10. We further note that a co-ordinate Bench of this Court in ***Atlantis Intelligence Ltd. vs. Union of India and others*** reported in ***2025 SCC OnLine All 5291,*** wherein one of us (Shekhar B. Saraf) upon sifting through the ratios laid down by the Supreme Court and High Courts in various judgments, has extracted the principles with regard to maintainability of the writ petitions after expiry of the time frame for filing appeal stipulated in the special statute. The said principles were summarized below:

> "A. An order that this Court could make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution of India, but also be consistent with the substantive provisions of the relevant statutory laws.
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> B. In exercising powers under Article 226 of the Constitution of India and in assessing the needs of 'complete justice' of a cause or matter, the High Court should take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly.
>
> C. The prescription of limitation when the statute commands that delay may be condoned to a maximum of one month further would come within the ambit and sweep of the policy of legislation. In such cases, Section 29(2) read with Section 3 of the Limitation Act would apply, and accordingly, the Courts shall have no power to condone the delay of any further period even in writ jurisdiction under Article 226 of the Constitution of India.
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> D. The principle of Section 14 of the Limitation Act which is a principle based on advancing the cause of justice would certainly apply to exclude time taken in prosecuting proceedings which are bona fide and with due diligence pursued, which ultimately end without a decision on the merits of the case."

11. In the present case, the petitioner has come to this writ Court

after the limitation has expired for filing an appeal under Section 107 of the Act. Though, this Court is clear in its mind that limitation may not be *stricto sensu* applicable to this Court in writ jurisdiction, however, time and again the Courts have held that latches and diligence is something which has to be seen by this Court while exercising its extraordinary power under writ jurisdiction. In our view, no proper explanation has been provided by the petitioner for non-filing of the appeal within time and/or non-filing of the writ petition within the limitation period and/or any attempt to explain the latches as to why the writ petition has been filed at such a belated stage. Furthermore, writ jurisdiction can certainly not be exercised when invoked to undermine or defeat the application of a statutory regime so as to render the provision of limitation provided in the statute otiose. In light of the same, we are of the view that entertaining this writ petition would amount to allowing the petitioner to circumvent the statutory appellate procedure.

12. As a sequel to the above discussion, this Court is of the view that this Court should not indulge the writ petitioner in condoning the delay as the present case is neither a case of gross violation of principles of natural justice nor patent illegality, the writ petition, is accordingly, **dismissed,** with no order as to cost.

13. We make it clear that the petitioner shall be at liberty to proceed in accordance with law and if the petitioner files an appeal, the order passed by this Court and the observations herein shall not affect the decision of the appellate forum.

May 26, 2026
Praveen

(Abdhesh Kumar Chaudhary,J.) (Shekhar B. Saraf,J.)