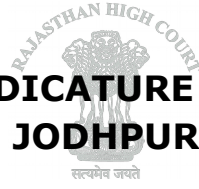




**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**



D.B. Civil Writ Petition No. 2785/2023

Malik Khan S/o Sh Sadeek Khan, Aged About 39 Years, Resident Of Rozaniyon Ki Basti, Sam, Jaisalmer Rajasthan, Being The Proprietor Of Desert Gateway Resorts, Opposite Sam Sand Dunes, Sam Road, Sam, Jaisalmer, Rajasthan 345001

-----Petitioner

Versus

1. Chief Commissioner Gst And Central Excise, (Jaipur Zone), Jaipur, Ncr Building, Statue Circle, Jaipur 302005
2. Assistant Commissioner, Circle Jaisalmer, Jodhpur I Ward I, Sadar Bazar, Jaisalmer, Rajasthan 345001.

-----Respondents

For Petitioner(s) : Mr. Sharad Kothari
For Respondent(s) : Mr. Hemant Dutt

**HON'BLE MR. JUSTICE VIJAY BISHNOI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR**

Judgment / Order

03/05/2023

[PER HON'BLE VIJAY BISHNOI, J.]

(1) This writ petition is filed by the petitioner challenging the order dated 16.2.2022 passed by the Assistant Commissioner, Circle Jaisalmer, Jodhpur-I Ward-I, whereby a demand of Rs.15,10,570/- was assessed while exercising powers under Section 73 of the Central Goods and Services Tax Act, 2017 (for



short 'the Act of 2017') and the petitioner was directed to pay the same by 17.5.2022 with a warning that in case the aforesaid amount is not paid, proceedings shall be initiated against him to recover the outstanding dues.

(2) Brief facts of the case are that the petitioner is a proprietor-firm in the name and style of Desert Gateway Resorts, which is engaged in hospitality sector and having its registration under the Act of 2017. On 29.12.2021, the respondents have issued an intimation letter informing the petitioner of the tax ascertained as being payable under Section 73(5) of the Act of 2017 for the tax period between July 2017 to March 2018. Admittedly, the petitioner has not responded the said intimation letter, then a show cause notice was issued by the respondents to the petitioner on 24.1.2022 under Section 73 of the Act of 2017 and he was asked to furnish a reply along with the supporting documents by 10.2.2022. Again the petitioner has not responded to the said show cause notice, then the order impugned dated 16.2.2022 is passed which is challenged by the petitioner by way of filing instant writ petition under Article 226 of the Constitution of India.

(3) Assailing the order impugned dated 16.2.2022, learned counsel for the petitioner has argued that the impugned order is patently illegal and against the principles of natural justice and equity. It is further argued that the respondents have failed to properly determine and specify the reasons towards creating demand against the petitioner and despite mentioning in the impugned order itself that they have not provided reasons in the



attached annexure. It is further submitted that in fact no such annexure has been supplied. It is submitted that in the facts and circumstances of the case, the action of the respondents is patently illegal and without jurisdiction.

(4) Learned counsel for the petitioner has further argued that as per Section 73 of the Act of 2017, the respondents are required to provide reasons while passing the impugned order whereas from a bare perusal of the same, it is clear that no such reasons have been provided in the impugned order, which results in violation of the principles of natural justice and right of fair hearing and therefore, the order impugned is liable to be set aside.

(5) In support of the above, learned counsel Mr. Kothari has relied upon the decision of the Hon'ble Supreme Court rendered in ***Assistant Commissioner (CT) LTU, Kakinada & Ors. Vs. M/s. Glaxo Smith Kline Consumer Health Care Limited (Civil Appeal No.2413/2020 arising out of SLP(C) No.12892/2019*** and decision of ***Madras High Court*** rendered in ***W.P.No.28415 of 2022 decided on 16.11.2022.***

(6) In response to the notice issued by this Court, the respondents have filed reply to the writ petition, wherein certain preliminary objections have been raised.

(7) Mr. Hemant Dutt, learned counsel for the respondents has argued that the writ petition filed by the petitioner is not maintainable because the petitioner is having an alternate and efficacious remedy of filing appeal before the appellate authority under Section 107 of the Act of 2017.



(8) In reply to the writ petition, the respondents have contended that the petitioner has concealed the fact that in the financial year 2017-18, he has the credit of amount of Rs.60,35,268/- in his bank account, but he has filed the GST return while showing the total turnover of Rs.3,60,400/- only and from the above fact, it is clear that the petitioner has concealed the credit of Rs.56,74,868/-. It is further stated in the reply that the summon dated 8.12.2021 issued to the petitioner under Section 70, 174 of the Act of 2017 was duly served upon him, but no response has been given by the petitioner to the said summon. Mr. Dutt has further argued that since the petitioner has failed to file proper GSTR for financial year 2017-18, therefore, the liability was created for Rs.15,10,571/- which includes tax, interest and penalty.

(9) Mr. Dutt has vehemently submitted that as the statutory remedy of filing appeal was available to the petitioner, the present writ petition is not liable to be entertained. Reliance is placed on the decisions of the Hon'ble Supreme Court rendered in ***The Assistant Commissioner of State Tax and Others Vs. M/s Commercial Steel Limited (Civil Appeal No.5121 of 2021 arising out of SLP(C) No.13639 of 2021 @ D No.11555 of 2020)*** and ***The State of Maharashtra and Others Vs. Greatship (India) Limited (Civil Appeal No.4956 of 2022)***.

(10) Mr. Kothari, learned counsel for the petitioner has submitted that since the order impugned is a non speaking order and has not complied with the provisions of Section 73 of the Act of 2017, this writ petition is very much maintainable as the



impugned order is violation of principles of natural justice. Mr. Kothari has further submitted that the limitation for filing appeal under Section 107 of the Act of 2017 has already expired and now the petitioner cannot prefer appeal before the appellate authority, therefore, in such circumstances, this writ petition filed by the petitioner may be entertained and the same be decided on merits as the petitioner cannot be left remedy-less.

(11) Heard learned counsel for the parties.

(12) It is an admitted position that against the impugned order, the petitioner has not filed statutory appeal under Section 107 of the Act of 2017. Since the limitation of filing appeal has already expired, the petitioner now cannot prefer appeal against the impugned order.

(13) Now, the question is whether this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, can entertain writ petition challenging the impugned order on the ground that limitation period for filing statutory appeal has already expired ?

(14) The facts, which are not in dispute, are that the impugned order was passed on 16.2.2022 and per Section 107 of the Act of 2017, limitation provided for challenging the impugned order by way of appeal is 30 days and that limitation period could be extended by the appellate authority for a further period of one month subject to the satisfaction of the appellate authority that the person aggrieved was prevented by sufficient causes from presenting the appeal within a period of three months. In the present case, the petitioner has not filed appeal before the



appellate authority within the prescribed limitation and has directly filed this writ petition before this Court on 14.2.2023 i.e. almost after eight months of expiry of limitation period.

(15) We are of the view that after expiry of the limitation period of filing appeal, the writ petition filed by the petitioner challenging the impugned order is not maintainable. This view of us is getting support from the decision of the Hon'ble Supreme Court rendered in **Assistant Commissioner (CT) LTU, Kakinada & Ors. (supra)**, which is also relied upon by the counsel for the petitioner.

(16) The Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada & Ors.'s case (supra)** has held as under :

"14. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution.

15. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in **Electronics Corporation of India Ltd.** (supra), which had adopted the view taken by the Full Bench of the Gujarat High Court in **Panoli Intermediate (India) Pvt. Ltd. v. Union of India and Ors.** and also of the Karnataka High Court in **Phoenix Plasts Co. v. Commissioner of Central Excise (Appeal-I), Bangalore.** The logic applied in these decisions



proceeds on fallacious premise. For, these decisions are premised on the logic that provision such as Section 31 of the 1995 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the Assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and Rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ***Oil and Natural Gas Corporation Limited*** (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

(Emphasis Supplied)





(17) As observed earlier, the petitioner has not filed any statutory appeal before the appellate authority within the limitation period and has directly filed this writ petition before this Court after eight months of the expiry of limitation, we are of the view that as per the law laid down by the Hon'ble Supreme Court rendered in **Assistant Commissioner (CT) LTU, Kakinada & Ors.'s case (supra)**, the writ petition filed by the petitioner cannot be entertained as being not maintainable.

(18) In view of the above discussion, this writ petition is hereby dismissed.

(PRAVEER BHATNAGAR),J

(VIJAY BISHNOI),J

83 - ms rathore