



2024:KER:87231

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 19TH DAY OF NOVEMBER 2024 / 28TH KARTHIKA, 1946

WP(C) NO. 33866 OF 2024

PETITIONER:

BAIJU GEORGE,
AGED 49 YEARS
S/O. GEORGE, VARAVUMKAL (H), KARIMANNOOR P.O.,
THODUPUZHA, IDUKKI, PIN - 685581

BY ADV MOOSA E.S.

RESPONDENTS:

- 1 COMMISSIONER OF GOODS AND SERVICE TAXES
DEPARTMENT, KERALA, KARAMANA P.O., KILLIPPALAM,
TRIVANDRUM, PIN - 695002
- 2 JOINT COMMISSIONER,
GOODS AND SERVICE TAX DEPARTMENT, IDUKKI AT
KATTAPPANA SOUTH P.O., , PIN - 685515
- 3 JOINT COMMISSIONER (APPEALS) ,
STATE GOODS AND SERVICE TAX DEPARTMENT, PUBLIC
LIBRARY BUILDING, SHASTRI ROAD, KOTTAYAM, PIN -
686001
- 4 GOODS AND SERVICE TAX OFFICER (WORKS CONTRACT) ,
KATTAPPANA SOUTH P.O., IDUKKI, PIN - 685515

OTHER PRESENT:

SMT. THUSHARA JAMES (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.9.2024 AND HAVING BEEN FINALLY HEARD ON 08.11.2024, THE
COURT ON 19.11.2024 DELIVERED THE FOLLOWING:



JUDGMENT

The petitioner suffered certain orders under Section 62 of the CGST/SGST Acts. These orders which are on record as Ext.P1 series were all issued on 11.2.2020 and 12.2.2020. According to the petitioner, certain returns were filed later (after the period set out in Section 62) for the period in respect of which Ext.P1 series of orders were issued. It is the case of the petitioner that the petitioner was advised bed rest on account of a '*fatty liver*' problem and therefore the petitioner could not file any appeal against Ext.P1 series of orders in time and could file the appeal only in the month of December 2023. The Appellate Authority dismissed the appeals filed by the petitioner by the orders on record as Exts.P3(a) and P3(b) finding that the appeals were time-barred. The petitioner is thus before this Court seeking the following reliefs:-

“I. Issue a writ of mandamus or any appropriate writ, direction or order for taken the step to condone the delay of file the appeal against the Ext.P1 orders of the direction for condone the delay and here (sic) the case by the 3rd respondent.

II. To pass any other and such other orders as this Honourable court deem fit to pass to the nature and circumstances of the case.”

2. The learned counsel appearing for the petitioner submits that in the facts and circumstances of the case, this Court must



exercise jurisdiction under Art.226 of the Constitution of India to permit the petitioner to file appeals against Ext.P1 series of orders. The learned counsel also submitted that the Calcutta High Court had recently permitted the filing of an appeal by holding that the provisions of Section 5 of the Limitation Act, 1963 were applicable to appeals filed under Section 107 of the West Bengal State Goods and Services Act, 2017. The learned counsel also refers to the judgment of the Supreme Court produced as Ext.P7 to contend that applications for condonation of delay must be considered liberally and without adopting a very technical approach.

3. The learned Government Pleader vehemently opposes the grant of any relief to the petitioner. It is submitted that the impugned orders in this case were issued in the month of February, 2020. It is submitted that the appeal was filed only in the month of February 2024 after an inordinate delay of about four years. It is submitted that the reason submitted by the petitioner is that he was taking treatment for fatty liver disease and therefore he was advised bed rest. It is submitted that the medical certificate itself is doubtful. It is submitted that no ground has been made out for interference and the writ petition is liable to be dismissed.

4. Having heard the learned counsel for the petitioner



and the learned Government Pleader, I am of the view that the petitioner has not made out any ground for grant of relief in this writ petition. Admittedly, the petitioner filed appeals against Ext.P.1 series of orders only in the month of February 2024 i.e., four years after the date on which the orders against which the appeal was sought to be filed had been issued. This Court cannot, normally, in the exercise of jurisdiction under Art. 226 of the Constitution of India extend the time limit for filing an appeal under Section 107 of the CGST/SGST Acts. This is clear from the law laid down in ***Singh Enterprises v. CCE and Ors, (2008) 3 SCC 70***. The issue was considered in the context of Section 35 of the Foreign Exchange Management Act, 1999 in ***Ketan V. Parekh v. Enforcement Directorate, (2011) 15 SCC 30***. After considering the provisions of the Limitation Act, 1963 it was held:-

17. Section 35 of the Act as also Sections 5, 14 and 29(1) and (2) of the Limitation Act, which have bearing on the decision of the issue raised in the appeals, read as under:

“35. Appeal to High Court.—Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the



said period, allow it to be filed within a further period not exceeding sixty days.

“.....”

18. The question whether the High Court can entertain an appeal under Section 35 of the Act beyond 120 days does not require much debate and has to be answered against the appellants in view of the law laid down in Union of India v. Popular Construction Co., (2001) 8 SCC 470, Singh Enterprises v. CCE (2008) 3 SCC 70, CCE & Customs v. Punjab Fibres Ltd. (2008) 3 SCC 73, Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169, CCE & Customs v. Hongo India (P) Ltd., (2009) 5 SCC 791 and Chhattisgarh SEB v. Central Electricity Regulatory Commission, (2010) 5 SCC 23”

The judgment in ***Ketan V. Parekh (supra)*** is also authority for the proposition that though Section 5 of the Limitation Act, 1963 may not apply, the benefit of Section 14 of that Act can be extended in appropriate cases. It is only when the Court finds certain extraordinary circumstances that prevented the petitioner from filing an appeal within time, the Court will exercise such jurisdiction (in rare cases) and direct that the petitioner should be permitted to contest an appeal filed beyond the statutory time limit, on merits. I had the occasion to consider this issue in my Judgment in ***Karuvannur Service Co-operative Bank Limited v. Assistant Commissioner (Judgment dated 7.11.2024 in W.P (C) No. 27865 of 2024)*** where I have held as follows:-



“4. Having heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents, I am of the view that the learned Standing Counsel appearing for the respondents may be right in contending that in normal circumstances, this Court will not restore an appeal which has been rejected on the ground that it was filed beyond the period of limitation if it has found that such rejection was justified by the statutory provisions governing the filing of such appeal. However, if this Court comes to the conclusion that there are some special and extraordinary circumstances which could have prevented the person filing the appeal from presenting the appeal within time, this Court cannot be denuded of the authority to issue a writ of mandamus commanding the Appellate Authority to consider the appeal on the merits and to take a decision in the matter. The concurring judgment of **B. L. HANSARIA, J**, in **B.C. Chaturvedi v. Union of India (UOI) and Others; AIR 1996 SC 484**, holds thus:

“21. I am in respectful agreement with all the conclusions reached by learned brother Ramaswamy, J. This concurring note is to express my view on two facets of the case. The first of these relates to the power of the High Court to do “complete justice”, which power has been invoked in some cases by this Court to alter the punishment/penalty where the one awarded has been regarded as disproportionate, but denied to the High Courts. No doubt, Article 142 of the Constitution has specifically conferred the power of doing complete justice on this Court, to achieve which result it may pass such decree or order as deemed necessary; it would be wrong to think that other Courts are not to do complete justice between the parties. If the power of modification of punishment/penalty were to be available to this Court only under Article 142, a very large percentage of litigants would be denied this small relief merely because they are not in a position to approach this Court, which may, inter alia, be because of the poverty of the person concerned. It may be remembered that the framers of the Constitution permitted the High Courts to even strike down a parliamentary enactment, on such a case being made out, and we have hesitated to concede the power of even substituting a punishment/penalty, on such case being made out. What a difference? May it be pointed out that Service Tribunals too, set up with the aid of Article 323-A have the power of striking down a legislative act.

22. The aforesaid has, therefore, to be avoided and I have



no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh's case [*Shivdeo Singh v. State of Punjab*, AIR (1963) SC 1909] that the High Courts too can exercise power of review, which inheres in every Court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a Court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter”.

5. Taking cue from the observations of the Supreme Court in **B.C. Chaturvedi** (*supra*), I am of the view that, in the extraordinary and special circumstances of this case, the order of the Appellate Authority can be set aside and the appeal filed by the petitioner against Ext.P3 order can be restored to file with a direction to the Appellate Authority to hear and dispose of the appeal on merits and in accordance with the law.

6. Accordingly, this writ petition is allowed, setting aside Ext.P5 order of the Appellate Authority and directing that the appeal filed by the petitioner against Ext.P3 order-in-original shall be heard and disposed of in accordance with the law by the Appellate Authority after affording to the petitioner an opportunity of being heard. It is made clear that this order has been issued taking into consideration the extraordinary and special circumstances and this judgment shall not be treated as a precedent applicable in all cases where the appeal has been filed



beyond time and such appeal has been dismissed on the ground that it is filed beyond the period of limitation.

Writ petition ordered accordingly.”

I see no extraordinary circumstances in this case to grant similar relief to the petitioner.

5. There is yet another aspect of the matter. Though Article 226 of the Constitution of India does not fix any period of limitation for the filing of a writ petition, it is settled law that a writ petition can be dismissed on the ground of inordinate delay in filing the writ petition. As already observed the orders issued by the adjudicating authority were issued in the month of February 2020. This Writ Petition has been filed only in the year 2024. That is another reason to decline relief. The petitioner has failed to approach this Court within a reasonable time.

The contention of the petitioner that he was sick and advised bed rest due to fatty liver disease has to be taken with a pinch of suspicion. For the aforesaid reasons, the writ petition fails, and it is accordingly dismissed.

Sd/-

**GOPINATH P.
JUDGE**

acd



APPENDIX OF WP(C) 33866/2024

PETITIONER EXHIBITS

- Exhibit P1(a) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT FEBRUARY 2018 DTD 11.02.2020
- Exhibit P1(b) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT MARCH 2018 DTD 11.02.2020
- Exhibit P1(c) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT APRIL 2018 DTD 12.02.2020
- Exhibit P 1(d) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT MAY 2018 DTD 12.02.2020
- Exhibit P1 (e) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT JUNE 2018 DTD 12.02.2020
- Exhibit P1 (f) TRUE COPY OF ASSESSMENT ORDER U/S 62 OF GST ACT JULY 2018 DTD 12.02.2020
- Exhibit P1 (g) TRUE COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT AUGUST 2018 DTD 12.02.2020
- Exhibit P1 (h) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT SEPTEMBER 2018 DTD 12.02.2020
- Exhibit P1 (i) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT NOVEMBER 2018 DTD 12.02.2020
- Exhibit P1 (j) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT DECEMBER 2018 DTD 12.02.2020
- Exhibit P1 (k) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT JANUARY 2019 DTD 12.02.2020
- Exhibit P1 (l) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT FEBRUARY 2019 DTD 12.02.2020
- Exhibit P1 (m) COPY OF THE ASSESSMENT ORDER U/S 62 OF GST ACT MARCH 2019 DTD 12.02.2020
- Exhibit P2 COPY OF MEDICAL CERTIFICATE



- Exhibit P3(a) COPY OF THE APPELLATE ORDER NO.GSTA
(IDK)120/2023 TO 131/2023 DATED 21.02.2024
- Exhibit P3(b) COPY OF APPELLATE ORDER NO.GSTA (IDK)
78/2024 DATED 21.02.2024
- Exhibit P4 COPY OF CITATION NO.W.P. NO. 16048 OF 2024
AND W.M.P. NOS. 17551 & 17553 OF 2024 OF
MADRAS HIGH COURT IN THE CASE SMA TEX V/S
PROPER OFFICER/ASSTT. CST(FAC)
- Exhibit P5 COPY OF THE CITATION NO. W.P. (MD) NOS.
20925 OF 2023,1461 AND 3158 OF 2024 AND
W.M.P. (MD) NOS.17331 OF 2023,1501,1502,
3124 AND 3126 OF 2024 OF MADRAS HIGH COURT
IN THE CASE M ANTONY SELVAN V/S STO (SGST)
(FAC)
- Exhibit P6 COPY OF OBSERVATION AND RULING OF CALCUTTA
HIGH COURT
- Exhibit P7 COPY OF JUDGMENT CIVIL APPEAL NO.4628 OF
2023 (ARISING OUT OF SLP (C)
NO.27901/2015) OF SUPREME COURT IN THE
CASE RAHEEM SHAH & ANR V/S GOVINDH SINGH&
OTHERS