

Neutral Citation No. - 2023:AHC:169364

RESERVED

Court No. - 5

Case :- WRIT TAX No. - 391 of 2021

Petitioner :- M/S Manoj Steel Traders

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Shri Suyash Agarwal, learned counsel for the petitioner and learned ACSC for the State - respondent.
2. The present writ petition is being entertained in view of the fact that no GST Tribunal has been constituted in the State of U.P.
3. The present writ petition has been filed challenging the order dated 23.02.2021 passed by the Additional Commissioner, Grade - 2 (Appeals - 4), Ghaziabad by which the appeal of the petitioner has been dismissed on the ground of limitation.
4. The brief facts of the case are that the petitioner is a registered dealer and deals with the business of iron & steel. On 18.03.2018, while the goods were transported, the respondent no. 3 intercepted the goods and found that away bill - 01 was not available with documents and consequently detained the goods and a notice was issued under section 129(3) of the UPGST Act directing the petitioner to deposit the tax & penalty. Aggrieved against the order dated 18.03.2018, the petitioner filed Writ Tax No. 500/2018, in which vide order dated 28.03.2018, an interim order was passed releasing the goods of the petitioner, along with vehicle. Ultimately, on 28.03.2018, the respondent no. 3 passed an order imposing tax amounting to Rs. 3,06,893/- and penalty amounting to Rs. 3,06,893/-. Against the order dated 28.03.2018, the petitioner preferred an appeal before the respondent no. 2

accompanied by delay condonation application, which has been dismissed by the impugned order dated 23.02.2021 on the ground of limitation.

5. Learned counsel for the petitioner submits that the original penalty order under section 129(3) of the UP GST Act was received on 26.06.2019; whereas, the original copy of the order was received by the erstwhile counsel, who did not file the appeal and therefore, the mistake on the part of the counsel, should not be treated adversely against the petitioner. He further submits that the order dated 28.03.2018 was served upon the local counsel, Shri Anil Jain, who did not communicate the said order to the petitioner. Therefore, an application was moved for getting the certified copy of the order on 26.06.2019 by another counsel, namely, Shri Rajeev Kumar Singh and on the same day, the appeal was preferred. He further submits that a bona fide mistake on the part of the counsel in pursuing a remedy is a good ground for condonation of delay in approaching the right forum in the right kind of proceedings.
6. He further submits that as per section 107 of the UP GST Act, the appeal can be preferred within three months from the date of communication of the order. The petitioner, being aggrieved person, for the first came to know about the order dated 28.03.2018 on 26.06.2019 and therefore, the appeal was within limitation. He further submits that in section 169 of the UP GST Act, various modes of service have been prescribed. The authorities were duty-bound to first serve the copy of the order upon the aggrieved person, i.e., the petitioner, and not upon his earlier counsel. He further submits that section 107 of the UP GST Act is to be read in consonance with section 169 of the UP GST Act, but the authorities have not consider the said aspect of the matter that the date of communication, as referred in section 107 of the UP GST Act, is the date when, for the first time, the

petitioner came to know about the impugned order and being aggrieved on the very day, preferred an appeal, which has illegally been rejected as beyond limitation. He further submits that the mistake on the part of the counsel of the petitioner is a reasonable cause and the appellate authority ought to have considered the same with a lenient view. He prays for allowing of the writ petition.

7. Per contra, learned ACSC submits that the respondent no. 3 passed an order dated 28.03.2018 after examining the entire facts and records. On the same day, copy of the order dated 28.03.2018 was served upon the counsel of the petitioner, namely, Shri Anil Jain, as per the provision of section 169(1) of the UP GST Act. The limitation starts from 28.03.2018 and the appeal could be filed by the petitioner within three months from the date of service upon its Advocate, but the 1st appeal was filed beyond the period of limitation. Thereafter, the appellate authority has rightly rejected the appeal of the petitioner after taking into consideration all the facts and materials. By referring to section 169(1) (a) of the UP GST Act, he submits that service upon the Advocate is sufficient service as the Advocate represents and appears for and on behalf of the petitioner. The petitioner cannot take shelter that the order dated 28.03.2018 has to be served upon the petitioner itself. He further submits that the order dated 28.03.2018 had already been communicated to the Advocate appearing for and on behalf of the petitioner and therefore, the impugned order has rightly been passed rejecting the appeal beyond the period of limitation. He prays for dismissal of the writ petition.
8. After hearing the learned counsel for the parties, the Court has perused the records.
9. For appreciating the controversy in hand, the relevant provisions of sections 107 (1) and 169 of the UP GST Act are quoted below:-

Section 107. Appeals to Appellate Authority:

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed **within three months from the date on which the said decision or order is communicated to such person.**

Section 169: Service of notice in certain circumstances-

(1) **Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—**

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative **or an advocate or a tax practitioner** holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

10. From the perusal of the aforesaid provisions, it is evidently clear that the appeal against an order can be preferred within a period of three months from the date of communication. Section 169 (1)(a) of the UPGST Act provides that any decision, order, summons, notice or other communication shall be served by any one of the following methods, namely, by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or **authorised representative or an advocate or a tax practitioner** holding authority to appear in the proceedings on behalf of the taxable person. Therefore, it is evident that the order communicated on an Advocate will be deemed service upon the petitioner.
11. It is admitted that the order was passed on 28.03.2018 and the said order was duly communicated to the Advocate of the petitioner, namely, Shri Anil Jain. Once an order has been communicated on 28.03.2018, the limitation for filing an appeal within a period of three months ends in the last week of June, 2018.
12. Learned counsel for the petitioner argued that on 26.06.2019, an application was moved for getting the certified copy of the order through another counsel, namely, Shri Rajeev Kumar Singh, and on that very day, the appeal was preferred without any further delay. On the pointed query as to how and under what mode the petitioner came to know about the passing the order dated 28.03.2018 on 26.06.2019, learned counsel for the petitioner

could not reply the same and submitted that the appeal filed below is silent on this point.

13. Surprisingly, without any communication or any reference about the knowledge of the order dated 28.03.2018 being passed, the certified copy of the order was applied and on the same day, the appeal was preferred. On perusal of section 5 application of the petitioner filed in support of the appeal, not a single word has been whispered as to how and in what method the petitioner came to know about the said order on 26.06.2019 and as to why the application was moved on 26.06.2019 by another counsel, when the order dated 28.03.2018 was already communicated to the petitioner's Advocate, namely, Shri Anil Jain. Once the Advocate, namely, Shri Anil Jain, was representing the petitioner before the respondent – Assistant Commissioner, State Tax, Mobile Squad, on which the order dated 28.03.2018 was served on the same day, i.e., on 28.03.2018, was not disputed at any stage and the only ground taken was that Shri Anil Jain, Advocate has not informed the petitioner about the order dated 28.03.2018. In view of these facts not being in dispute, the impugned order cannot be interfered with.
14. In view of the aforesaid facts & circumstances of the case, the writ petition lacks merit and the same is hereby dismissed.

Order Date :-23/08/2023

Amit Mishra