

**Writ Petition not to be filed when an efficacious alternative remedy of appeal is available**

The Hon'ble Jharkhand High Court in *M/s Shivam Hi Tech Steels Pvt. Ltd v. State of Jharkhand [W.P.(T) No. 1823 of 2021 dated December 21, 2022]* directed the assessee to seek alternative statutory remedy of appeal against the order of demand and detention of vehicle for alleged expiry of E-Way bill, passed by the State Taxes Officer.

**Facts:**

M/s Shivam Hi Tech Steels Pvt. Ltd. ("**the Petitioner**") is engaged in the business of Ferro Alloy and other ancillary products who received a purchase order from M/s. Tata Steel Ltd. for supply of 500 tons of Ferro Alloys & Ferro Titanium to its plant at Jamshedpur & Kalinga Nagar for the period commencing from August 1, 2020 to May 31, 2021. The consignment was dispatched on January 30, 2021 and while in transit, the truck was intercepted on February 4, 2021 by the officers of Intelligence Bureau.

Subsequently, for alleged expiry of E-Way Bill, an order of detention and a Show Cause Notice ("**SCN**") was issued on February 8, 2021. The Petitioner then executed a bond for an amount of INR 31,52,780/- for release of goods and vehicle on February 15, 2021 and accordingly, the truck and goods were released with imposing tax and penalty under Section 129(3) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**").

However, on March 23, 2021, the State Tax Officer, Ranchi, proceeded suo-moto and register the truck driver in terms of Rule 16(1) of the Central Goods and Services Tax Rules, 2017 ("**the CGST Rules**"), for payment of tax and penalty.

The Petitioner contended that there being no evasion of tax and no contravention of Section 129(3) of the CGST Act and that the State Tax Officer has no jurisdiction to carry out the proceedings under Section of 129 of the CGST Act. Further, the proceeding has been initiated against the truck driver, but the truck driver is not registered as a dealer and also the Bank

Guarantee had been furnished by the Petitioner. Furthermore, an attempt to file an appeal was made by the Petitioner, but due to some technical difficulties, the appeal was not filed.

Hence, this petition has been filed.

**Issue:**

Whether the writ petition filed by the Petitioner maintainable where efficacious remedy of appeal is available to the Petitioner?

**Held:**

The Hon'ble Jharkhand High Court in ***W.P.(T) No. 1823 of 2021*** held as under:

- Noted that, an efficacious alternative remedy by way of appeal is available to the Petitioner under Section 107 of the CGST Act.
- Directed that, the Petitioner to approach the Appellate Authority against the order of detention passed.
- Stated that, in case the appeal is not accepted online for any technical reasons, the Petitioner shall file an appeal manually before the Appellate Authority, to raise all the issues of facts and law and the grounds available, which shall be decided by the Appellate Authority in accordance with law.

**Relevant Provisions:**

**Section 107 of CGST Act:**

*“Appeals to Appellate Authority.*

*(1) Any person aggrieved by any decision or order passed under this Act or the Central 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.*

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

*(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.*

*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.*

*(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.*

*(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-*

*(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*

*(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.*

*Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

*(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.*

*(8) The Appellate Authority shall give an opportunity to the appellant of being heard.*

*(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*

*(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.*

*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the*

*proposed order and the order is passed within the time limit specified under section 73 or section 74.*

*(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*

*(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:*

*Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.*

*(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.*

*(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.*

*(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.”*

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