

Appeal to GST tribunal can be made within three months from the date of constitution of Appellate Tribunal

The Hon'ble Bombay High Court in *M/s Essar Steel Suppliers v. Union of India & Ors. [W.P.No.2301 OF 2022 dated July 03, 2023]* held that the appeal to tribunal can be made within three months from the date of constitution of the Appellate Tribunal.

Facts:

M/s Essar Steel Suppliers ("**the Petitioner**") filed the writ challenging the Order-in Appeal dated April 21, 2021 passed by the Commissioner of Central Taxes, Central Excise, and Service Tax (Appeals).

Due to the non-constitution of the GST tribunal the Petitioner was not able to file appeal before the GST tribunal and filed writ before the Hon'ble Bombay High Court.

Issue:

Whether the Petitioner can challenge order of the Commissioner before the High Court?

Held:

The Hon'ble Bombay High Court in *W.P.No.2301 of 2022* held that:

- Observed that, the GST tribunal has not been constituted till the date of passing of order i.e. April 21, 2021 by the Commissioner of Central Taxes, Central Excise, and Service Tax.
- Relied on the judgment of Co-ordinate Bench of the Hon'ble Bombay High Court in *Rochem India Pvt. Ltd. v. The Union of India & Ors. [Writ Petition No.10883 of 2019 dated February 08, 2023]* held that the period of filing the Appeal will stand extended as indicated in Clause 4.2 of *Circular No.132/2/2020-GST dated March 18, 2020* ("the

Circular”) and the impugned order will not be given effect until two weeks after the period prescribed for filing an appeal as under Clause 4.2 of the Circular.

- Noted that, the CBIC had issued the Circular clarified that appeals before the GST tribunal can be made within three months from the date of constitution of GST Tribunal and the period of filling the appeal will be extended as indicated in clause 4.2 of the Circular.
- Disposed the writ.

Relevant Extract of the Circular:

Para 4.2:

“The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.”

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