

Appellate Authority should provide sufficient reasons for not considering Appeals filed after the limitation period

The Hon'ble Bombay High Court in the case of *M/s. IMS Ship Management Private Ltd. v. State of Maharashtra [Writ Petition (L) No. 3121 of 2023 dated October 17, 2023]* disposed of the writ petition by quashing and setting aside the Appellate Order and holding that the Revenue Department should have given proper reasoning on the issue raised by the Petitioner in the written statement pertaining to the limitation in the Impugned Order.

Facts:

M/s. IMS Ships Management Pvt. Ltd. ("**the Petitioner**") is engaged in the business of supplying floating, submersible drilling and production platforms, dredgers, and supply of crew-members. The Petitioner, on July 23, 2021, received a notice issued by the Revenue Department ("**the Respondent**") for the period of July 2017 to March 2018 through which discrepancies arising in the return were intimated to the Petitioner for which reply was filed by the Petitioner on the same day. Further, on December 31, 2021, the Respondent issued an intimation of tax ascertained as payable under Section 73(5) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"). Further, due to Petitioner denying the tax ascertained in intimation, the Respondent issued Petitioner Show Cause Notice dated February 25, 2022, under Section 73 of the CGST Act. The Petitioner, thereafter, received a recovery notice on email, issued by the Respondent. Therefore, it came to the knowledge of the Petitioner that an Order in Original dated April 28, 2022 ("**the OIO**") has been passed against the Petitioner.

The Petitioner filed an appeal with the Respondent challenging the OIO. In the Appeal filed, the Petitioner stated the date of communication as August 20, 2022, as the date of communication, therefore there is no delay in filing the appeal. The Petitioner also filed an application for condonation of delay against which the notice was issued by the Respondent seeking an explanation on the delay of 59 days in filing the appeal by taking the date of the

OIO i.e., April 28, 2022, as starting point of limitation. The Petitioner was issued a notice dated November 4, 2022, seeking an explanation for a delay of 59 days in filing an Appeal. Thereafter, the Petitioner, filed detailed submissions vide letters dated November 14, 2022, and November 24, 2022.

The Respondent vide order dated December 12, 2022 (**“the Impugned Order”**) dismissed the appeal as not maintainable on the ground that, the appeal has been filed after a delay of 59 days, which is beyond the period prescribed under Section 107(4) of the CGST Act.

Aggrieved by the Impugned Order, the Petitioner filed a writ petition on the ground that, the OIO was not communicated to the Petitioner, and it came to the knowledge of the Petitioner only when the Petitioner received a recovery notice issued by the Respondent. Thereafter an appeal dated September 26, 2022, was filed, and the same was filed within three months as per Section 107 of the CGST Act. Also, the detailed submission filed by the Petitioner was not taken into consideration at the time of passing of the Impugned Order.

Issue:

Whether the Appellate Authority provide sufficient reasons for not considering submission while deciding the limitation issue after the appeal is filed?

Held:

The Hon’ble Bombay High Court in the case of ***Writ Petition (L) No. 3121 of 2023*** held as under:

- Opined that, the Impugned Order passed by the Respondent is devoid of proper reasoning and has not taken into consideration the written submissions filed by the Petitioner. The Respondent should have given proper reasoning on the issue raised by the Petitioner in the written statement pertaining to the limitation in the Impugned Order. The Respondent failed to do so and therefore the Impugned Order suffers from infirmity and is liable to be quashed and set aside.

- Held that, the Impugned Order is quashed and set aside, and the appeal filed by the Respondent on September 26, 2022, is restored. Hence, the Writ Petition is allowed.
- Directed that, the Respondent shall grant a personal hearing to the Petitioner, and after taking into consideration the submissions made by the Petitioner, the Respondent shall pass a speaking order, taking consideration the issues raised by the Petitioner. The Respondent should, thereafter, adjudicate on the merits of the case if it is of considered view that there is no delay in filing the appeal.

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