

2024 (85) G.S.T.L. 98 (App. A.A.R. - GST - T.N.)

BEFORE THE APPELLATE AUTHORITY FOR ADVANCE RULING UNDER GST, TAMIL NADU

Shri Ashish Varma and Dr. D. Jagannathan, Members

IN RE : ARUN COOLING HOME

Order AAAR/2/2024 (AR), dated 22-1-2024 in AAAR/RC.26/2023/A1

Advance ruling - Appellate authority - Appeals to - Limitation period - Appellant was engaged in running cold storage of agriculture produces like tamarind, apple, dates, potato, tomato and chilies - Assessee suffered from COVID during period of pronouncement of verdict of AAR and he was advised by his doctor to be in rest for 2 years as he was a senior citizen - Thus appeal against order of AAR was filed after a delay of 920 days - Assessee had filed application for condonation of delay - *HELD* : As per Section 100 of CGST Act, 2017 appeal has to be filed within 30 days from date of communication of AAR order that is sought to be challenged and appellate authority is empowered to allow appeal to be presented within further period not exceeding 30 days if it is satisfied that assessee was prevented by sufficient cause from presenting appeal within initial period of 30 days - In instant case, there had been a delay of 920 days from last date of filing appeal under Section 100(2) - Hence, appellate authority was not empowered to condone said delay in filing - Therefore, appeal filed by assessee was to be dismissed on ground of limitation without going into merits - Section 100 of Central Goods and Services Tax Act, 2017 - Section 100 of Tamil Nadu Goods and Services Tax Act, 2017. [*paras 5.3, 5.11 and 5, 12*]

Ruling in favour of Department

CASE REVIEW

Arun Cooling Home — 2021 (49) G.S.T.L. 322 (A.A.R. - GST - T.N.) — **Affirmed** [Paras 2.1, 2.3, 5.4]

CASES CITED

Cognizance for Extension of Limitation — 2022 (56) G.S.T.L. 385 (S.C.) = 2022 (379) E.L.T. 276 (S.C.) — **Distinguished** [Paras 4.1, 5.6]

Raheem Shah v. Govind Singh — Civil Appeal No. 4628 of 2023, decided on 24-7-2023 by Supreme Court — *Referred* [Paras 4.1, 5.7]

Sikha Debnath v. Assistant Commissioner of State Tax — 2023 (71) G.S.T.L. 362 (Cal.) = (2023) 4 Centax 18 (Cal.) — **Distinguished** [Paras 4.1, 5.7]

Singh Enterprises v. Commissioner — 2008 (221) E.L.T. 163 (S.C.) — *Followed*..... [Para 5.10]

Suraj Mangar v. Assistant Commissioner of West Bengal State Tax — W.P.A. No. 2809 of 2022, decided on 9-1-2023 by Calcutta High Court — **Distinguished**..... [Paras 4.1, 5.7]

NOTIFICATIONS CITED

Notification No. 11/2017-C.T. (Rate), dated 28-6-2017..... [Para 2.3]

Notification No. 12/2017-C.T. (Rate), dated 28-6-2017..... [Paras 2.3, 2.4, 2.5]

REPRESENTED BY : S/Shri D. Kabaleeswaran, Managing Partner and K. Sivabalan, Advocate, for the Assessee.

[Order]. - At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act and the Tamil Nadu Goods and Service Tax Act are in *pari materia* and have the same provisions in like matter and differ from each other only on few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Services Tax Act, 2017 would also mean a reference to the same provisions under the Tamil Nadu Goods and Services Tax Act, 2017.

2.1 The subject appeal was filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act, 2017/Central Goods & Services Tax Act, 2017 (hereinafter referred to 'the Act') by M/s. ARUN COOLING HOME (hereinafter referred to as 'Appellant'). The Appellant was registered under the GST Act *vide* GSTIN 33ABBFA8029R1Z4. The appeal was filed against the Order No. 07/ARA/2020, dated : 24-3-2021 passed by the Tamilnadu State Authority for Advance Ruling on the Application for Advance Ruling filed by the Appellant [2021 (49) G.S.T.L. 322 (A.A.R. - GST - T.N.)]. While filing the appeal, the Appellant had paid Rs. 10,000/- only towards SGST *vide* Form DRC-03, with debit entry NO. DC3310230386132, dated 21-10-2023.

2.2 The Appellant has also filed petition for condonation of delay as they had filed the subject appeal on 7-11-2023, after a delay of 920 days, whereas as per Section 100(2) of the CGST Act, 2017, 30 days is the time limit for filing appeal from the date of receipt of the order. In their petition for condonation of delay, the Appellant (Sh. D. Kabaleeswaran, Managing Partner) stated that he suffered from COVID during the period of pronouncing the verdict and he was advised by his doctor to be in rest for 2 years as he is a senior citizen and that he should not take any stress. The Appellant stated that it was because of the said reason they were unable to file the appeal within the stipulated time limit. In the Affidavit filed by them, the Appellant prayed that the delay of 954 days in filing the appeal may be condoned.

2.3 The Appellant is engaged in cold storage of agricultural produce like tamarind, apple, dates, potato, tomato and chillies. They had approached the Authority for Advance Ruling (AAR) with the following question, *i.e.*

“Whether the service of cold storage of tamarind inner pulp without shell and seeds are exempted under the purview of the definition of Agricultural produce *vide* Notification Nos. 11/2017 and 12/2017-C.T. (Rate), dated 28-6-2017?”

The AAR, *vide* their Order No. 07/ARA/2020, dated 24-3-2021, passed the following ruling for the question raised by the Appellant,

“The tamarind inner pulp without shell and seeds is not an ‘Agricultural produce’ as defined under Explanation 2(d) of the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017 and therefore the

service of cold storage of such tamarind are not exempted under Sl. No. 54(e) of Notification No. 12/2017-S.T. (Rate), dated 28-6-2017.”

2.4 The AAR, in their discussions, stated that the product, tamarind is processed by drying the same under the sun, by beating with wooden sticks to remove the pod, hammered to deseed and destring for extraction of endocarp/pulp and these processes are done as ‘Cottage Industry’. Hence the product would not fall under the term ‘Agricultural Produce’ as defined under Explanation 2(d) of the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. For the same reason, the exemption at Sl. No. 54 of the said Notification was not extended.

2.5 Aggrieved by the said order, the Appellant filed an appeal on 7-11-2023 against the order of AAR. In their grounds of appeal, the Appellant mainly contended that tamarind is a fruit, the outer cover of the tamarind pods are removed by the farmers themselves; then the seeds and strings are removed and no machineries were deployed; the removal of shell and seed is not a process as mentioned under Explanation 2(d) of the Notification No. 12/2017-C.T. (Rate), dated 28-6-2017. They further added that the supporting service making tamarind fit for primary market it exempted under the Act. They also relied on the decision of AAR, Andhra Pradesh and AAR, Madhya Pradesh in similar cases.

3.1 The Appellant, while filing the appeal, had paid Rs. 10,000/- only towards SGST *vide* Form DRC-03, with debit entry No. DC3310230386132, dated 21-10-2023. As per sub-rule (1) of Rule 106 of CGST Rules, 2017, a fee of Rs. 10,000/- under CGST is also required to be paid for filing an appeal against the AAR orders, which was not complied with by the Appellant. Further, the Appellant had filed the appeal after a delay of 920 days. Hence a defect memo dated 8-1-2024, pointing the two defects in the application was sent to the Appellant by email and in view of the same the Appellants were instructed to appear for a personal hearing on 12-1-2024.

Personal hearing

4.1 Sh. D. Kabaleeswaran, Managing Partner, M/s. Arun Cooling Home and Sh. K. Sivabalan, Advocate, who is the Authorised Representative (AR) of the Unit, appeared for the personal hearing held on 12-1-2024. The AR reiterated the submissions made by them in the petition for condonation of delay filed with the application. During PH, they submitted additional submissions, wherein they had attached copies of the following decisions of the Hon’ble Supreme Court and Hon’ble High Courts in similar cases, where the Courts have condoned the delay in filing the appeal and relied on the same :

(i) The Larger Bench of the Hon’ble Supreme Court’s order dated 10-1-2022 in *Suo Motu* Writ Petition (c) No. 3 of 2020 [2022 (56) G.S.T.L. 385 (S.C.) = 2022 (379) E.L.T. 276 (S.C.) = [2022] 134 taxmann.com 307 (SC)]

(ii) Calcutta High Court order dated 9-1-2023 in W.P.A. No. 2809 of 2022.

(iii) Calcutta High Court order dated 10-2-2023 in W.P.A. No. 304 of 2023 [2023 (71) G.S.T.L. 362 (Cal.) = (2023) 4 Centax 18 (Cal.) = [2023] 148 taxmann.com 6/96 GST 803 (Cal.)]

(iv) Civil Appellate jurisdiction of the Hon’ble Supreme Court’ order dated 24-7-2023 in Civil Appeal No. 4628 of 2023.

They also submitted a ‘Discharge Summary’ dated 31-5-2021 in respect of Sh. D. Kabaleeswaran, as a proof of his medical condition.

4.2 During the personal hearing, the Members pointed out that a defect memo was sent to them, wherein it was stated that apart from the delay in filing the appeal application, the appellant has not paid the additional fee of Rs. 10,000/- under sub-rule (1) of Rule 106 of the CGST Rules, 2017. The Members stated that only on payment of the additional fee of Rs. 10,000/- under sub-rule (1) of Rule 106 of the CGST Rules, 2017, the petition for condonation of delay will be taken up. The AR stated that they would pay the same at the earliest and submit the relevant document.

4.3 Accordingly, the Appellant submitted a DRC-03 challan dated 18-1-2024, for having paid the fees under CGST of Rs. 10,000/- vide debit entry No. DC3301240136185, dated 18-1-2024, as stipulated under sub-rule (1) of Rule 106 of the CGST Rules, 2017.

Discussion and findings

5.1 We have carefully gone through the records of the case and the submissions made by the Appellant in their application. Before getting into the discussion of the issue in the appeal, we find that there is a delay in filing the appeal and non-payment of fee towards filing of appeal. Hence the same will be examined first before moving forward to decide the issue raised in the Appeal.

5.2 We find that the Appellant, after the personal hearing, has paid the fees of Rs. 10,000/- vide debit entry No. DC 3301240136185, dated 18-1-2024 under sub-rule (1) of Rule 106 of the CGST Rules, 2017, and submitted a copy of the DRC-03 challan dated 18-1-2024. Since the Appellant has paid the fees, the petition for condonation of delay is taken up for consideration.

5.3 We find that in terms of Section 100 of the CGST Act, 2017, an appeal should be filed within 30 days from the date of communication of the advance ruling order that is sought to be challenged. However, the Appellate Authority is empowered to allow the appeal to be presented within a further period not exceeding 30 days if it is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the initial period of 30 days. Along with the appeal in Form ARA-02, the Appellant had filed an Affidavit for condonation of delay, wherein it was stated that Sh. D. Kabaleeswaran, the Managing Partner of the unit suffered from COVID during the period of pronouncing the verdict and he was advised to be in rest for 2 years and therefore he was unable to file the appeal within the stipulated time limit. In the Affidavit filed, the Appellant prayed that the delay of 954 days in filing the appeal may be condoned.

5.4 We find that the date of the Order No. 07/ARA/2020 passed by the AAR is 24-3-2021. The order was received by the Appellant on 3-4-2021 as per the RPAD acknowledgement card received and placed in the office records. Hence the last date for filing the appeal under Section 100(2) of the CGST Act, 2017, would be 2-5-2021. The last date for filing the appeal with a delay of 30 days with condonation petition [as per first proviso to Section 100(2) of the CGST Act, 2017] would be 1-6-2021. Whereas it is seen that the actual date of filing the appeal by the Appellant was on 7-11-2023. Clearly, there has been a delay of 920 days from the last date of filing the appeal under Section 100(2) of the CGST Act, 2017.

5.5 Proviso to Section 100(2) of CGST Act, 2017, states that -

“Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.”

5.6 The Appellant has placed reliance on the decision of the Larger Bench of the Hon'ble Supreme Court's order dated 10-1-2022 in *Suo Motu* Writ Petition (c) No. 3 of 2020, wherein the relevant portion states as follows :

(I) & (II) XX XX XX

We find that, even if we apply the ratio of the above decision of Hon'ble Supreme Court to the present case, as per the Appellant's claim that their last date for filing the appeal falls between the period 15-3-2020 to 28-2-2022, the limitation to file the appeal is only 90 days from 1-3-2022 *i.e.*, the last date would be 29-5-2022, whereas the appeal in the present case was filed on 7-11-2023, *i.e.*, after a lapse of 527 days from 29-5-2022. Therefore, we find that reliance placed by the Appellant on the said Hon'ble Supreme Court's judgment is of no avail to them.

5.8 The law of limitation in India identifies the need for limiting litigation by striking a balance between the interests of the State and the litigant.

5.9 Therefore, we hold that the filing of the appeal falls beyond the powers conferred under proviso to Section 100(2) of the CGST Act, 2017.

5.10 In this regard, we refer to the decision dated 12-12-2007 of the Hon'ble Supreme Court in *Singh Enterprises v. CCE, Jamshedpur* in Civil Appeal No. 5949 of 2007 [2008 (221) E.L.T. 163 (S.C.)]. The Hon'ble Supreme held that :

“8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute are vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period up to which the prayer for *condonation can be accepted is statutorily provided*. It was submitted that the logic of section 5 of the Indian Limitation Act, 1963 can be availed for condonation of delay. The first proviso to section 35 makes the position clear that the appeal has to be preferred within the three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the Appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the *appellate authority has no power to allow the appeal to be presented beyond the period of 30 days*. The language used makes the position clear that the Legislature intended, the appellate authority to entertain the appeal by condoning the delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period.”

5.11 The aforesaid ruling of the Hon'ble Supreme Court is squarely applicable to the facts of the case. It is evident that this Appellate Authority being a creation of the statute is empowered to condone the delay of only a period of 30 days after the expiry of the initial period for filing appeal. As far as the language of Section 100 of the CGST Act, 2017 is concerned, the crucial words are 'not exceeding thirty days' used in the proviso to sub-section (2). Further, we are of the opinion that to hold that this Appellate Authority could entertain this appeal beyond the extended period under the proviso would render the phrase 'not exceeding thirty days' wholly redundant. No principle of interpretation would justify such a result. Notwithstanding the above, the Appellate Authority is not a 'Court' and hence the power to condone beyond the prescribed period does not lie with it.

5.11 Since the appeal cannot be allowed to proceed on account of time limitation, the question of discussing the merits of the issue in this case in appeal does not arise.

5.12 In view of the above facts and circumstances of the case, and based on the discussions held above, we are of the considered view that we are not empowered to condone the delay in filing this appeal. In view of the above, we pass the following order :

ORDER

6. We dismiss the appeal filed by the Appellant, M/s. Arun Cooling Home, 50/1, Natham Main Road, Kadavur Village, Chatharapatti, Madurai 625014, on the grounds of time limitation without going into the merits of the case.