

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:156502

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1263 of 2023

M/S Anand And Anand (Law Firm)

.....Petitioner(s)

Versus

Principal Commissioner Central Goods And Services And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)

:

Sanyukta Singh, Shubham Agrawal

Counsel for Respondent(s)

:

Parv Agarwal

Court No. - 5

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri Shubham Agrawal, learned counsel for petitioner and Sri Ranjit Kumar Verma, Advocate holding brief of Sri Parv Agarwal, learned counsel for respondents.

2. The limited issue before this Court is in terms of sub-clause (11) of Section 107 of Central Goods and Services Tax Act, 2017 whether Appellate Authority has power to remit the matter back to Adjudicating Authority to decide the matter afresh?

3. Learned counsel for petitioner has vehemently referred aforesaid clause 107(11) of the Act, 2017 which is quoted below :-

"107. Appeals to Appellate Authority :-

1??.

2??

3??.

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(1)[or section 74A]."

4. From plain reading of aforesaid Section as well as its Clause, there is a mandatory bar for the Appellate Authority that cases shall not be remitted back to Adjudicating Authority who has passed the said decision or order.

5. In the light of aforesaid provision, Court also takes note of paragraph 17 and 18 of impugned order dated 27.09.2023 which are quoted below :-

"17. However, I find that in the instant case the respondent party has not produced any conclusive evidence viz. any agreement etc., therefore in absence of any such evidence available on record, it be appropriate to remand the case back to the adjudicating authority to examine the place of provision of service in details with supporting documents. Needless to say that the procedure of natural justice must be followed before passing any order.

18. In view of the foregoing, all the 09 appeals as listed in para 1 of this order as has been filed by the Department are allowed by way of remand with the directions to the adjudicating authority to re-determine place of supply of service to qualify as the service of respondent as "export of Service as per the provisions of law after examination of the documents by calling from the respondent party."

6. While passing aforesaid direction, Joint Commissioner, CGST Appeals, NOIDA has not carefully perused the above referred sub-clause (11) of Section 107 of Act of 2017.

7. At this stage, Court also takes note that in earlier part of impugned order, probably there are findings in favour of petitioner herein and observations made in paragraph 17 does not relate with earlier findings returned in impugned order.

8. Learned counsel for petitioner has also relied upon a judgment passed by Division Bench of this Court in M/s Kronos Solutions India Pvt. Ltd. vs. Union of India and others, 2024:AHC:16550-DB wherein similar issue was considered in following manner. For reference, relevant paragraphs of it are quoted below :-

"7. Undeniably, the appeal authority may either confirm or modify or annul the order under appeal. In face of statutory prescription allowing for only three above described options to the appeal authority, no inherent power may remain be exercised by the appeal authority to set aside the order

under appeal and remand the proceedings to the original authority. Any doubt in that regard has been clarified by the legislature itself by stating that the appeal authority shall not refer the matter back to the adjudicating authority.

8. Accordingly, no other issue is required to be adjudicated at this stage. Once the appeal authority is seen to have failed to exercise its jurisdiction in accordance with law, such an order may never be sustained. It is accordingly set aside and the matter is remanded to the appeal authority to pass a fresh order after hearing the parties afresh."

9. Learned counsel for respondents has not able to make any submission contrary to contents of above referred Clause (11) of Section 107 as well as M/s Kronos Solutions (supra).

10. In aforesaid circumstances, latter part of impugned order dated 27.09.2023 whereby matter has been remitted back to Adjudicating Authority is set aside and this writ petition is disposed of with an observation that Joint Commissioner, CGST Appeals, NOIDA shall decide the appeals filed in accordance with law.

11. The present writ petition is entertained against the order passed in Appeal directly since GST Tribunal which is still not functioning.

12. Writ petition stands disposed of with above observations and directions.

(Saurabh Shyam Shamshery,J.)

September 4, 2025

N. Sinha