IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 13TH DAY OF JUNE 2023 / 23RD JYAISHTA, 1945

WP(C) NO. 15574 OF 2023

PETITIONER/S:

PENUEL NEXUS PVT. LTD., REP. BY ITS MANAGING DIRECTOR SRI. M.O. JOSEPH , AGED 49 YEARS
PENUEL NEXUS PVT. LTD., XXIII/408, KANNAPARAMPAN ARCADE, MARKET P O, MUVATTUPUZHA, ERNAKULAM, PIN - 686673

BY ADVS.
GEORGIE SIMON
BASIL CHANDY VAVACHAN
TRESA AUGUSTINE
AISWARYA T.S.
BIJU .C. ABRAHAM

RESPONDENT/S:

1 THE ADDITIONAL COMMISSIONER HEADQUARTERS (APPEALS), ERNAKULAM AT MATTANCHERRY, FIRST FLOOR, BAZAAR ROAD, MATTANCHERRY, KOCHI - 682002

2 STATE TAX OFFICER, TAXPAYER SERVICES CIRCLE, COCHIN STATE GST DEPARTMENT, MUVATTUPUZHA STATE DEPARTMENT, MINI CIVIL STATION, 2ND FLOOR, MUDAVOOR PO, MUVATTUPUZHA, KERALA, PIN - 686669

BY ADV.THUSHARA JAMES, SENIOR GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

Can an appeal be filed beyond the time period prescribed under Section 107 (4) of the Central Goods and Services Tax Act, 2007 is the point posed in this writ petition.

2. The petitioner is a firm engaged in direct marketing. The petitioner had a GST registration. Due to the Covid-19 pandemic, the petitioner's business got affected and was prevented from filing the returns on time. The respondents, by Ext.P2 order, cancelled the GST registration. Even though the petitioner preferred Ext.P3 appeal before the 1st respondent, by Ext.P4 order, the appeal was rejected on the ground of delay. Exts.P2 and P4 are arbitrary and unjustifiable. Hence, the writ petition.

3. Heard; Sri. Biju C.Abraham, the learned Counsel appearing for the petitioner and Smt.Thushara James, the learned Senior Government Pleader, appearing for the respondents.

4. The learned Counsel for the petitioner argued that it was only due to the Covid-19 pandemic that the petitioner was prevented from filing the return on time. The petitioner's appeal was perfunctorily rejected, by the 1st respondent. Ext.P4 order is erroneous. The learned Counsel placed reliance on the decision of the High Court of Uttarakhand in ***Vinod Kumar v. Commissioner Uttarakhand State GST and Ors.*** *[(2023) 109 GSTR 85]* to canvass the position that as there is an infringement of the petitioner's right to life, this Court can set aside Exts.P2 and P4 orders under Article 226 of the Constitution of India. He prayed that the writ petition may be allowed.

5. The learned Government Pleader countered the above submission by contending that by virtue of Section 29(2)(c) of the Central Goods and Services Tax Act, 2007 (in short 'Act'), the proper officer has the power to cancel the GST registration if the registered person does not file the returns for such continuous period as may be prescribed, which at that point of time was six months. If the person is aggrieved by the cancellation, his remedy is to file an appeal under Section 107 of the Act. However, the appeal has to be filed within the time frame prescribed under Section 107(4) of the Act, that is, three/six months, as the case may be, with a further period of one month. An appeal filed beyond the

permitted time can only be dismissed as time-barred. It is in view of the above restrictive time frame that the 1st respondent rejected the appeal. There is no error in Ext.P4 order warranting interference by this Court. Hence, the writ petition may be dismissed.

6. By Ext.P2 order, the petitioner's GST registration was cancelled on 10.08.2022. The petitioner preferred Ext.P3 appeal on 07.03.2023, i.e., after 209 days, which is undoubtedly beyond the statutory period fixed under Section 107 (4) of the Act.

7. Section 107(4) of the Central Goods and Services Tax Act, 2017 reads thus:

> *(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".*

8. Interpreting an analogous provision under the Central Excise Act, 1944, the Honourable Supreme Court in ***Singh Enterprises v. Commissioner of Central Excise, Jamshedpur and others*** *[(2008) 3 SCC 70]* held as follows:

> *"8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not 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 Limitation Act, 1963 (in short "the Limitation Act") 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 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 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".

9. In ***CCE & Customs v. Hongo India (P) Ltd.*** *[(2009) 5 SCC 791],* the Honourable Supreme Court, again interpreting Section 35 of the Central Excise Act, 1944, reiterated its earlier view by holding thus:

"31. In this regard, it is useful to refer to a recent decision of this Court in ***Punjab Fibres Ltd.*** *[(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H (1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions*

following ***Singh Enterprises v. CCE*** *[(2008) 3 SCC 70] concluded that : (****Punjab Fibres Ltd.*** *case [(2008) 3 SCC 73], SCC p. 75, para 8)*

"8. … the High Court was justified in holding that there was no power for condonation of delay in filing reference application."

32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions 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 expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence

of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days".

10. The Central Goods and Services Tax Act is a special statute and a self-contained code by itself. Section 107 is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted.

11. On an appreciation of the language of Section 107(4) and the above analysed factual and legal background, this Court is of the view that there is no illegality in the action of the 1st respondent in rejecting the appeal as time-barred.

The writ petition is meritless and is consequentially dismissed.

SD/-
C.S.DIAS
JUDGE

rkc/13.06.23

APPENDIX OF WP(C) 15574/2023

PETITIONER EXHIBITS

Exhibit P1	A TRUE COPY OF THE REGISTRATION CERTIFICATE OF GST REGISTRATION ISSUED TO THE PETITIONER, DATED ON 1/7/2017 (EXHIBIT P1).
Exhibit P2	A TRUE COPY OF THE ORDER OF CANCELLATION BEARING NO. ZA320922087041T ISSUED BY THE RESPONDENT, DATED ON 30/9/2022 (EXHIBIT P2).
Exhibit P3	A TRUE COPY OF THE APPEAL FILED BY THE PETITIONER BEFORE THE APPELLATE AUTHORITY ,DATED ON 07/03/2023 (EXHIBIT P3).
Exhibit P4	A TRUE COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT , DATED ON 28/3/2023 (EXHIBIT P4).