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By Nidhi, Advocate



Judgment No.: 012
Dt.: 16-11-2023



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Judgment Deals With

Section/Rule	Section 107
Authority	Bombay High Court
Case Name	IMS Ship Managements Pvt Ltd VS State Of Maharashtra and Ors.
Dated	17 th October, 2023

Brief Facts:

The Petitioner is engaged in the business of supplying of floating, submersible drilling and production platforms, dredgers and supply of crew-members. On 23.07.2021, the Petitioner received a notice for the period July, 2017 to March, 2018 intimating discrepancies in the return. The said notice was replied on 23.07.2021 itself by giving detailed reasons rebutting the alleged discrepancy.

On 31.12.2021, Department issued an intimation of tax ascertained as being payable under Section 73(5) of the CGST Act which was denied by the Petitioner which eventually led to the issuance of SCN under Section 73 on 25.02.2022.

On 20.08.2022, an email was received by the Petitioner for recovery of demand and it is at this point of time that the Petitioner came to know that an Order In Original (O-I-O) dated 28.04.2022 has been passed.

On 14.09.2022, the Petitioner informed Deputy Commissioner that they have not received O-I-O and that they were under a bonafide belief that the order would be passed only after personal hearing and since there was no personal hearing granted in the matter, they did not expect the order to be passed. It is only on receipt of recovery notice that it came to the knowledge of the Petitioner that the O-I-O dated 20.08.2022 has been uploaded on the portal.

On 26.09.2022, the Petitioner filed an Appeal with appellate authority challenging the aforesaid O-I-O. In the Appeal, the Petitioner stated the date of communication of O-I-O as 20.08.2022 and therefore, there is no delay in filing the Appeal.

The appellate authority issued a notice on 04.11.2022 seeking explanation on the delay of 59 days in filing the Appeal as per Section 107(1) read with Section 107(4) of the CGST Act. The said delay

appears to have been calculated by taking the date of O-IO to be 28.04.2022 as the starting point of limitation. The Petitioner filed detailed submissions vide letters giving the detailed reasoning as to why there is no delay in filing the Appeal.

However, the impugned order dated 12.12.2022 was passed dismissing the Appeal as not maintainable, since same has been filed late by 59 days which is beyond the period specified in Section 107(4) of the CGST Act.

It is on this backdrop and coupled with the fact that the CGST Tribunal has not been setup, the present Petition is filed challenging the order dated 12.12.2022 passed Appellate Authority.

Contention of Petitioner:

The O-I-O dated 28.04.2022 was not communicated to them and they came to know about this order only on receipt of recovery notice dated 20.08.2022. Immediately, thereafter an Appeal was filed under Section 107 of the CGST Act on 26.09.2022 and therefore, the same was within the period of 3 months as per Section 107 of the CGST Act and therefore, there is no delay in filing the Appeal.

The O-I-O was not communicated to them nor served and merely posting on common portal would not amount to the Petitioner having knowledge of the said order for the purpose of calculating the limitation period for filing the Appeal.

The Petitioner had filed detailed submissions vide letters on the issue of there being no delay, which have not been considered in the impugned order passed by appellate authority.

Contention of Department:

The O-I-O have been served and the limitation period would start from the date of uploading the said order and therefore, appellate authority was justified in dismissing the Appeal as time barred.

Findings & Order:

The impugned order dated 12.12.2022 passed by appellate authority is certainly bereft of any reasons. The appellate authority has not considered the written submissions filed by the Petitioner. The appellate authority ought to have considered the submissions of the Petitioner and ought to have given his reasons in the impugned order while deciding the limitation issue. Having not done so, the impugned order suffers from infirmity and therefore, requires to be quashed and set aside.

Thus, the impugned order dated 12.12.2022 was quashed & the Appeal filed on 26.09.2022 was restored to the file of appellate authority, with a direction that appellate authority would give a personal hearing to the Petitioner and after considering all the submissions would pass a speaking order dealing with all the contentions of the Petitioner with respect to the issue relating to the limitation.