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Judgment No.: 057
Dt.: 25-01-2024



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Judgment Deals With

Section/Rule	Section 62
Authority	Madras High Court
Case Name	Comfort Shoe Components VS Assistant Commissioner
Dated	14 th December, 2023

Brief Facts:

The petitioner did not file their returns for the month of December 2022, January 2023 and February 2023 within the prescribed time limit. Hence, the Department had passed the impugned orders, which are the best judgement assessment orders, in terms of the provisions of Section 62(1) of the GST Act, 2017 on 28.03.2023 for m/o December, 2022 and January 2023 and on 10.04.2023 for m/o February 2023. Thereafter, the petitioner had taken steps and filed the returns for m/o of December 2022 and January 2023 on 30.04.2023, & for m/o February 2023 on 24.06.2023.

Contention of the Petitioner:

As per the terms of Section 62(2) of the GST Act, if an Assessee filed his returns within 30 days from the date, on which the assessment order was served to him, the said assessment order passed by the Department will deemed to be withdrawn.

In present case, there was delay in filing returns due to financial difficulties faced by petitioner. Hence, condonation of the said delay and quashment of impugned assessment orders was sought by the petitioner.

Contention of the Department:

Only if the returns were filed within 30 days from the date on which the best judgement assessment orders were served, the petitioner was certainly entitled to avail the benefit, which is available under Section 62(2) of the GST Act.

However, in present case, the returns were not filed by the petitioner within prescribed time limit of 30 days.

Findings & Decision of the Court:

A reading of the provisions of Section 62 would make it clear that if any registered person fails to furnish the returns under Section 39 of the Act, a proper officer may proceed to assess the tax liability of the said person

to the best of his judgement taking into account all the relevant materials, which are available or which he has gathered and pass an assessment order within 5 years from the date specified for furnishing of the annual return for the financial year, in which the tax was not paid.

In present case, since the petitioner had not filed the returns for the months of December 2022, January 2023 and February 2023 within the prescribed time limit, the assessment order has been passed by the Department u/s 62(1) of the GST Act on 28.03.2023 and 10.04.2023.

In terms of provisions of Section 62(2) of the GST Act, if a registered person furnishes the valid returns within 30 days of the service of assessment order under Section 62(1) of the GST Act, the said assessment order would be deemed to have been withdrawn. However, the liability for the payment of interest u/s Section 50(1) or for payment of late fee u/s 47 of the GST Act shall continue.

The idea of implementation of the said provision is to afford an opportunity to the registered person to furnish and file the returns within 30 days from the date of service of assessment order, which was passed under Section 62(1) of the GST Act.

Now the issue is what will be the situation if the petitioner failed to furnish the returns within 30 days as prescribed under Section 62(2) of the GST Act. Whether the petitioner will lose his opportunity to file the returns or the petitioner will still be entitled to file the returns by providing sufficient reasons for non-filing of returns, whereby enabling the Department to condone the delay and accept the returns of the petitioner.

The Department can make the best judgement assessment order within 5 years from the end of financial year, for which the registered person is liable to file the annual returns. In the present case, the relevant financial year is pertaining to 31.03.2023, the petitioner is liable to file the annual returns on or before 31.12.2023. Therefore, the said period of 5 years to make the best judgement assessment order for the Department will start on 01.01.2024 and end on 31.12.2029.

In such case, if the best judgement assessment order is passed by the Department on 31.12.2029, the petitioner can file his returns 30 days therefrom i.e., on or before 30.01.2030. Hence, the time limit is available up to 30.01.2030 for the petitioner to file their returns. When such being the case, since the best judgement assessment order has been made by the Department at the earliest point of time, the legal right of the petitioner to file the returns, which is available under Section 62 of the Act, cannot be taken away. If the best judgement assessment order has not been passed on the earlier date, the petitioner can file his returns even without paying any interest or penalty.

Further, if the registered person was not able to file the returns within 30 days for the reasons, which are beyond his control, the said delay may be condoned upon providing of sufficient reasons by the said person. Since Section 62 of the GST Act permits the person to file their returns, making the assessment at the earliest point of time and fixing the time limit of 30 days period will curtail the right, which is available for the Assessee.

Thus, the limitation of 30 days period prescribed under Section 62(2) of the Act appears to be directory in nature and if the Assessee was not able to file the returns for the reasons, which are beyond his control, certainly the said delay can be condoned and thereafter, the Assessee can be permitted to file the returns after payment of interest, & late fees as applicable. At any cost, the right to file the returns cannot be taken away stating that the petitioner has not filed any returns within 30 days from the date of best judgement assessment order. Thus, if any application is filed before the Authority concerned with sufficient reasons for non-filing of returns within the prescribed time limit of 30 days, the same shall be considered on merits. If the Authority is satisfied with the said reasons, they can condone delay and permit the petitioner to file returns.

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