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By Nidhi, Advocate



Judgment No.: 133
Dt.: 24-05-2024



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Judgment Deals With

Section/Rule	Section 107
Authority	Rajasthan High Court
Case Name	M/s. Thekedar Nand Lal Sharma VS State of Rajasthan
Dated	30 th April, 2024

Brief Facts of the Case:

The petitioner alleges the correctness and validity of show cause notice dated 28.10.2022 issued under Section 74 of RGST Act, 2017/ CGST Act, 2017 for financial year 2018-19, as also order dated 02.03.2023 by which the petitioner has been directed to deposit the amount of Rs. 4,84,020/- towards tax, interest and penalty.

Contention of the Department:

After the proceedings under Section 74 of the RGST Act, 2017/the CGST Act, 2017 were drawn against the petitioner which culminated in order dated 02.03.2023 resulting in levy of tax liability along with interest and penalty, the petitioner did not file any appeal either within the period of limitation as prescribed under Section 107 of the RGST Act, 2017/ the CGST Act, 2017 or within the maximum period thereafter which could be condoned under the power to condone the delay in filing of the appeal.

Findings & Decision of the Court:

In the case of "Glaxo Smith Kline Consumer Health Care Limited" (supra), the question which arose for consideration was whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by law of limitation. After detailed consideration, the Hon'ble Supreme Court arrived at the conclusion that in such circumstances, the writ petition was not maintainable and was liable to be dismissed.

Present is a case where the petitioner did not even file appeal and allowed the order passed in assessment proceedings to become final and thereafter approached this Court by filing writ petition seeking to challenge the determination of tax, interest and penalty by the competent authority vide order dated 02.03.2023. Present is not a case where the order under Section 74 of the RGST Act, 2017/ the CGST Act, 2017 levying tax along with interest and penalty was passed without giving any opportunity of hearing to the petitioner.

According to the petitioner, he was issued SCN and thereafter, impugned order was passed. In the writ petition, no plausible explanation has been offered as to why the petitioner did not take recourse to the remedy of statutory appeal. It appears that the petitioner consciously did not choose to take recourse to the remedy of appeal as provided under Section 107 but waited for the expiry of the period of limitation for filing appeal and also the maximum period of delay which could be condoned in the exercise of powers conferred upon the appellate authority.

Having not preferred an appeal, the petition in present case, in view of the decision of Hon'ble Supreme Court in case of "Glaxo Smith Kline Consumer Health Care Limited" (supra), is not maintainable and the writ petition was dismissed.

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