[2024] 163 taxmann.com 165 (Andhra Pradesh)[07-05-2024]

GST : Where show cause notice was issued to assessee for cancellation of registration but assessee did not respond to same, it could not be said that there was violation of principles of natural justice; writ petition filed against order of cancellation of registration was to be dismissed

[2024] 163 taxmann.com 165 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Manimala International

v.

Assistant Commissioner of State Tax*

RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.
WRIT PETITION NO. 10845 OF 2024
MAY 7, 2024

Registration - Cancellation of - Violation of natural justice - Case of assessee was that impugned order cancelling registration was passed in violation of principles of natural justice as registration of assessee was cancelled retrospectively without affording opportunity of hearing to assessee - Respondent however contended that assessee approached instant court after one year of impugned order - Assessee had not explained laches in filing instant petition belatedly - Further, show cause notice was issued to assessee, however assessee did not reply, thus, there was no violation of principles of natural justice - Writ petition was not to be entertained on grounds of laches and same was to be dismissed [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 13 to 16] [In favour of revenue]

CASE REVIEW

State of Jammu and Kashmir v. *R.K. Zalpuri* [2015] 15 SCC 602 (para 10) and *Mrinmoy Maity* v. *Chhanda Koley* 2024 SCC Online SC 551 (para 11) *followed.*

Godrej Sara Lee Ltd. v. *Excise and Taxation Officer-cum-Assessing Authority* [Civil Appeal No. 5393 of 2010, dated 1-2-2023] (para 8) *distinguished.*

CASES REFERRED TO

Godrej Sara Lee Ltd. v. *Excise and Taxation Officer-cum-Assessing Authority* [Civil Appeal No. 5393 of 2010, dated 1-2-2023] (para 6), *State of Jammu and Kashmir* v. *R.K. Zalpuri* [2015] 15 SCC 602 (para 10) and *Mrinmoy Maity* v. *Chhanda Koley* 2024 SCC Online SC 551 (para 11).

J.N. Venkata Suresh Kumar *for the Petitioner.* **A.V. Badra Naga Seshayya**, Ld. Asstt. Govt. Pleader *for the Respondent.*

ORDER

Ravi Nath Tilhari, J. - Heard Sri Goondla Venkateswarlu, learned counsel appearing through virtual mode for the petitioner and Sri A.V.Badra Naga Seshayya, learned Assistant Government Pleader for Commercial Tax.

2. The challenge in this writ petition under Article 226 of Constitution of India is to the order of cancellation of petitioner's registration of GST, dated 24-4-2023.

3. Learned counsel for the petitioner submits that the impugned order has been passed in violation of the principles of natural justice. It has been given retrospective effect. He further submits that the petitioner's registration was suspended on 1-4-2023 without affording any opportunity of hearing and that the order has not been issued in the proper GST Form. Another submission is that the order has not been signed by the Assistant Commissioner (ST).

4. Learned Assistant Government Pleader submits that the petitioner has approached this Court after about one year of the impugned order. He submits that the show cause notice was given to the petitioner but he did not file response. It is further submitted that the order is signed digitally.

5. We have considered the submissions advanced and perused the material on record.

6. On a specific query, to the learned counsel for the petitioner, on the point of laches in filing the writ petition, he submits that the period of limitation for filing the writ petition is three years. He emphasized that the Hon'ble Apex Court in *Godrej Sara Lee Ltd.* v. *Excise and taxation Officer-cum-Assessing Authority* [Civil Appeal No. 5393 of 2010, dated 1-2-2023], has so held. We carefully perused the said judgment.

7. There the facts were that there the Apex Court was dealing with a case where the duty was paid on account of mis-construction, mis-application or wrong interpretation of a provision of law, notification or regulation. The question was if it was open to the manufacturer to say that the decision of a High Court or the Supreme Court, as the ease may be, in the case of another person has made him aware of the mistake of law and therefore, he was entitled to refund of duty paid by him? The question was could he invoke Section 72 of the Contract Act in such a case and claim refund and whether in such a case and claim refund it can be said that reading Section 72 of the Contract Act along with Section 17(1)(*c*) of the Limitation Act, 1963, the period of limitation for making such a claim for refund, whether by way of a suit or by way of a writ petition, is three years from the date of discovery of such mistake of law?

8. Learned counsel for the petitioner laid emphasis on this part, in para-70 but we are of the considered view that he is mistaken that was the question as was involved.

9. The Hon'ble Apex Court, held that the theory of mistake of law and the consequent period of limitation of three years from the date of discovery of such mistake of law cannot be invoked by an assessee taking advantage of the decision in another assessee's case. All claims for refund ought to be, and ought to have been, only under and in accordance with Rule 11/Section 11B and under no other provision and in no other forum. The decisions of the Court saying to the contrary were overruled therein. In the aforesaid case it has not been held that the period of limitation for filing writ petition is three years.

10. In the State of *Jammu and Kashmir* v. *R.K.Zalpuri* [2015] 15 SCC 602 on the aspect of delay and latches in filing the writ petition, the Hon'ble Apex Court has held as under:

> 21. In this regard reference to a passage emom from Karnataka y_untohn *Power oeiver Corpn. coron. Ltd. Ltd.* v. *v. K.Thangappanz would be apposite: (SCC p.* 325,para 6)
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> > "6. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party."
>
> After so stating the Court after referring to the authority in *State of M.P.* v. *Nandlal Jaiswa/s restated the principle articulated* in earlier pronouncements, which is to the following effect: (SCC p. 326, para 9)
>
> > "9.... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in-its-train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ

jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

The Hon'ble Apex Court clearly held that Writ Court while deciding writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner.

11. In *Mrinmoy Maity* v. *Chhanda Koley* 2024 SCC OnLine SC 551, the Hon'ble Apex Court held that delay and laches is one of the factors which should be borne in mind by the High Court while exercising discretionary jurisdiction under Article 226 of Constitution of India in given case, the High Court may refuse to invoke the extraordinary power. In para Nos.11 & 12, the Hon'ble Apex Court observes as follows:

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal* v. *State of W.B.* , (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner isguilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he Should come to the Court at the earliest reasonably possible opportunity Inordinate delay in making the motion for writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The uanderlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai, [AIR 1964 SC 1006 : (1964) 6 SCR 261], Moon Mills Ltd.v.Industrial Court, [AIR 1967 SC 1450] *and Bhoop Singh* v. *Union of India* , [(1992) 3 SCC 136: (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand . H.B. Munshi, [(1969) 1 SCC 110), Durga Prashad v. Chief Controller of Imports & Exports, [(1969) 1 SCC 185] *and Rabindranath Bose* v. *Union of India* , [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose."

12. It is apposite to take note of the dicta laid down by this Court in Karnataka Power Corportion Ltd. v. K. Thangappan, (2006) 4 SCC 322 whereunder it has been held that the High Court may refuse to exercise extraordinary jurisdiction if there is negligence or omissions on the part of the applicant to assert his right. It has been further held thereunder:

"6 . Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prashad v. Chief Controller

of Imports and Exports, [(1969) 1 SCC 185 : AIR 1970 SC 769]. Of course, the discretion has to be exercised judicially and reasonably.

7. What was stated in this regard by Sir Barnes Peacock in Lindsay Petroleum Co. v. Prosper Armstrong Hurd, [[L.R.] 5 P.C. 221 : 22 WR 492] (PC at p. 239) was approved by this Court in Moon Mills Ltd. v. M.R. Meher, [AIR 1967 SC 1450] *and Maharashtra SRTC* v. *Shri Balwant Regular Motor Service* , [(1969) 1 SCR 808 AIR 1969 SC 329]. Sir Barnes had stated:

> "Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy."

8. It would be appropriate to note certain decisions of this Court in which this aspect has been dealt with in relation to Article 32 of the Constitution. It is apparent that what has been stated as regards that article would apply, a fortiori, to Article 226. It was observed in Rabindranath Bose v. Union of India, [(1970) 1 SCC 84 : AIR 1970 SC 470] that no relief can be given to the petitioner who without any reasonable explanation approaches this Court under Article 32 after inordinate delay. It was stated that though Article 32 is itself a guaranteed right, it does not follow from this that it was the intention of the Constitution-makers that this Court should disregard all principles and grant relief in petitions filed after inordinate delay.

9. It was stated in State of M.P. v. Nandlal Jaiswal, [(1986) 4 SCC 566: AIR 1987 SC 251] that the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction."

12. The petitioner in the Writ Petition has not explained the laches in filing the writ petition belatedly. Its true that there is no period of limitation for filing the writ petition but at the same time, the petitioner has to approach within reasonable time. In the facts of the present case that the impugned order was passed with opportunity of hearing, the petitioner approached this Court under Article 226 of Constitution of India after almost one year, is not approaching in a reasonable time. The laches have also not been explained. Consequently, we are not inclined to entertain the writ petition in aforesaid ground.

13. The show cause notice dated 01.04.2023 was issued to the petitioner and the petitioner did not submit any reply. In the order of cancellation in the first sentence it shows that "this has reference to your reply dated 18.04.2023 in response to the notice to show cause dated 01.04.2023", and in the second sentence, "it clearly states that no reply to notice was filed by the petitioner". The case of the petitioner is that he did not file any reply. Consequently, in our view there is no violation of principles of natural justice since the petitioner was served with the show cause notice and he did not file any reply.

14. So far as the opportunity before passing the order of suspension is concerned, the suspension was passed during the pendency of the proceedings for cancellation, the opportunity of hearing is not required. Any legal provision could also not be placed before us that opportunity was required before suspension.

15. The impugned order shows that the same was digitally signed. Consequently, there is no force in the submission that the order is not signed.

16. In view of the aforesaid consideration, the argument that the impugned order has been given retrospective effect need not consideration as we are not inclined to entertain the writ petition on the ground of laches.

17. The Writ Petition is dismissed.

18. No orders as to costs.

19. As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

ANURAG

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*In favour of revenue.