

EY Tax Alert

HC holds delay in filing of appeal can be condoned beyond the limitation period prescribed under GST

Executive summary

This tax alert summarizes a recent decision of the Calcutta High Court (HC)¹ on applicability of Limitation Act, 1963 (Limitation Act) for condoning the delay in filing of appeal under Section 107 of the West Bengal State Goods and Services Tax Act, 2017 (WBGST Act).

As per section 107(1), any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority within three months from the date on which the said decision or order is communicated to such person.

Further as per sub-section (4), the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months, allow it to be presented within a further period of one month.

HC observed that:

- ▶ The key principle of determining applicability of provisions of Limitation Act to a special law is to consider the scheme of such special law so as to determine whether there is any express or implied exclusion of the provisions of the Limitation Act or not.
- ▶ Section 107 does not have a non-obstante clause rendering Section 29(2) of the Limitation Act non-applicable.
- ▶ In absence of specific exclusion of Section 5 of Limitation Act it would be improper to read an implied exclusion thereof.
- ▶ Thus, the provisions of Section 5 of Limitation Act stand attracted and the period for filing of appeal can be extended by the appellate authority.

Accordingly, HC requested Appellate Authority to consider and decide the application for condonation of delay on merits. If the explanations advanced for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal.

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¹ 2023 VIL 855 CAL

Background

- ▶ Assessee received a show cause notice (SCN) alleging suppression of outward supplies and assessment order was passed by adjudicating authority on 23 April 2019.
- ▶ Assessee preferred an appeal before the Appellate Authority on 16 December 2019.
- ▶ As per section 107(1) of West Bengal Goods and Services Tax Act, 2017 (WBGST Act), any person aggrieved by any decision or order passed by an adjudicating authority may appeal to Appellate Authority within three months from the date on which the said decision or order is communicated to such person.
- ▶ Further as per sub-section (4), the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the period of three months, allow it to be presented within a further period of one month.
- ▶ Appellate Authority refused to condone delay basis Section 107.
- ▶ Assessee preferred a writ petition (WP) before Calcutta High Court (HC).
- ▶ The learned single judge, after construing provisions of Section 107 as well as the decision in case of *New India Assurance Company Ltd vs. Hilli Multipurpose Cold Storage Private Limited*², held that no appeal could be preferred, in any event, beyond period of 4 months from the date of communication of order.³
- ▶ Aggrieved, the assessee filed an appeal before the Division Bench of HC.

Assessee's contentions

- ▶ Section 107 does not prohibit the applicability of Section 5 of the Limitation Act, 1963 (Limitation Act).
- ▶ Thus, Section 5 of Limitation Act is attracted and the delay in filing appeal beyond 4 months could be condoned by the appellate authority⁴.

Revenue's contentions

- ▶ The delay in approaching appellate authority was not adequately explained and thereby even if the appellate authority has the power to condone the delay in filing of appeal beyond 4 months, then also, no case for condonation of delay was made out by the assessee.
- ▶ The delay in filing appeal beyond a period of 4 months could not be condoned under Section 107 of WBGST Act⁵.

HC Ruling

- ▶ The key principle of determining applicability of provisions of Limitation Act to a special law is to consider the scheme of such special law so as to determine whether there is any express or implied exclusion of the provisions of the Limitation Act or not⁶.
- ▶ Section 107 does not state that beyond the prescribed period of limitation, the appellate authority cannot exercise jurisdiction to condone the delay⁷.
- ▶ Section 29(2) of Limitation Act provides that for the purpose of determining any period of limitation prescribed for any appeal by any special or local law, the provisions contained in sections 4 to 24 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.
- ▶ As per Section 5 of Limitation Act, any appeal may be admitted after the prescribed period if the appellant satisfies the court that he had sufficient cause for not preferring the appeal within such period.
- ▶ Section 107 does not have a non-obstante clause rendering Section 29(2) of the Limitation Act non-applicable.
- ▶ In absence of specific exclusion of Section 5 of Limitation Act it would be improper to read an implied exclusion thereof.
- ▶ Moreover, Section 107 in its entirety has not expressly stated that Section 5 of Limitation Act stands excluded.
- ▶ Thus, the provisions of Section 5 of Limitation Act stand attracted and the period for filing of appeal can be extended by the appellate authority.
- ▶ In view of the above, Appellate Authority is requested to consider and decide the application for condonation of delay on merits.
- ▶ If the explanations advanced for condonation of delay are accepted to be sufficient, the Appellate Authority may condone the delay in preferring the appeal.

² 2020 Volume 5 SCC 757

³ WPA 107 of 2021 and WPA 133 of 2021

⁴ (2023) 97 GST 154, 2019 VIL 35 SC and 2019 VIL 35 SC

⁵ 2020 VIL 18 SC

⁶ 2019 VIL 35 SC

⁷ (2023) 97 GST 154 (Calcutta)

Comments

- a. The ruling is likely to help taxpayers who were not able to file the appeal within the prescribed limit due to genuine reasons, in obtaining condonation from the appellate authority.
- b. Earlier, the Government had introduced an amnesty scheme for filing appeal before Appellate Authority where the appeal could not be filed against the demand order passed on or before 31 March 2023, or the appeal was rejected solely on the ground of being time-barred.
- c. It is relevant to note that Kerala HC in similar facts denied condonation of delay on the ground that Section 107 has an inbuilt mechanism and has impliedly excluded the applicability of provisions of Limitation Act [TS-254-HC(KER)-2023-GST].

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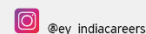
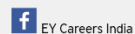
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