<u>Court No. - 7</u>

Case :- WRIT TAX No. - 1711 of 2018

Petitioner :- M/S Shanti Eat Udyog Surir Kala Tehsil Mant District Mathura
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Digvijay Tiwari
Counsel for Respondent :- C.S.C.

<u>Hon'ble Saumitra Dayal Singh,J.</u>

1. Supplementary affidavit filed today is taken on record.

2. Admittedly, the period of limitation to file a first appeal under Section 107 of the U.P. Goods and Services Tax Rules, 2017 is three months and the period for which the delay may be condoned is thirty days from the expiry of normal period of limitation. Clearly, no application for condonation of delay may have been entertained by the appellate authority beyond a period of thirty days from the date of expiry of normal period of limitation (three months).

3. In the instant case, there is also no dispute as to the date of the communication order passed by the Assessing Authority which may be relevant for the purpose of start point of period of limitation to file an appeal.

4. Consequently and clearly the first appeal filed by the petitioner against the order dated 03.12.2018 was beyond the period for which delay may have been condoned, by about nine days.

5. In view of the decision of the Supreme Court cited by Sri B.K. Pandey, learned Standing Counsel in the case of ***Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur*** reported in ***2008 (3) SCC 70*** *paragraph no. 8* as also the Full Bench decision of this Court in ***Commissioner of Income Tax I; Commissioner of Income Tax Central; Janpad Thok Kendriya Upbhokta Sahkari Bhandar Limited Vs. Mohd Farooq; New Cawnpore Floor Mills Pvt Ltd; Commissioner of Income Tax*** reported in ***2009 (317) ITR 305, t***he delay condonation application filed beyond the period of thirty days could not be condoned and it was clearly not maintainable by the appellate authority.

6. Consequently, there is no error in the order of the appellate authority dismissing the appeal as time barred.

7. Learned counsel for the petitioner then submitted that if the remedy of appeal is held to be non-existant, still jurisdiction of the writ Court against the original order dated 03.12.2018 may not be ousted. In this regard, it has been submitted that the petitioner is engaged in the activity of running a brick klin and that the entire production of bricks had been treated to be of first quality bricks which is erroneous. In the very nature of the activity of running that business, various qualities of bricks emerge in the manufacturing process, for various reasons.

8. Matter requires consideration.

9. Learned Standing Counsel has accepted notices on behalf of the respondents. He prays for and is granted four weeks time to file counter affidavit. Petitioner will have two weeks thereafter to file a rejoinder affidavit.

10. List immediately thereafter.

11. In the meanwhile, subject to the petitioner depositing 50% of the disputed amount of tax and furnishing security for the balance amount of disputed tax in the shape of other than cash and bank guarantee within a period of one month from today, further recovery proceedings initiated against the petitioner shall remain stayed

Order Date :- 18.1.2019
S.Chaurasia