

Court No. - 7

Case :- WRIT TAX No. - 1605 of 2018

Petitioner :- M/S Khandelwal Extractions Ltd.

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.,A.S.G.I.,Dhananjay Awasthi

Hon'ble Saumitra Dayal Singh,J.

1. The present writ petition has been filed by the petitioner to challenge the order dated 25.05.2018 passed by the Authority for Advance Ruling, Uttar Pradesh and the ex-parte order dated 12.10.2018 passed by the Appellate Authority for Advance Ruling for Goods and Services Tax, Uttar Pradesh, by which the said Appellate Authority has upheld the order dated 25.05.2018 passed by the Authority for Advance Ruling, Uttar Pradesh, on two counts (that had been decided against the petitioner) and has partly modified the order of the original authority (on the issue that had been decided in favour of the petitioner).

2. Briefly, the petitioner is a manufacturer of vegetable oil. The petitioner filed an application under Section 97 of the Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act') before the Authority for Advance Ruling, seeking answer to the following questions:

"1. Whether Mahua De-oiled Cake is classifiable under HSN 2309 being used as ingredient for Fish Feed, Fish farming and other aquatic uses?

2. Whether De-oiled Rice Bran is classifiable under HSN 2308 being used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds?

3. Whether the applicant is eligible to get entire tax input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacturer of solvent extracted oil?"

3. The aforesaid application was disposed by the Authority for Advance Ruling by its order dated 25.05.2018 in the following terms:

"The point wise clarifications are as under:-

a) Whether Mahua De-oiled Cake/De-oiled Rice Bran being used as an ingredient of Cattle Feed, Poultry Feed and other animal Feeds and is 'Waste generated' during the Solvent Extraction process?

Ans.- *Mahua De-oiled cake/ De-oiled Rice Bran is a by-product occurred during the Solvent Extraction process, which is used as an ingredient of Cattle Feed, Poultry Feed and other animal feeds.*

b) Whether the applicant is eligible to get entire tax input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacture of solvent extracted oil?

Ans.- *The Input credit of GST paid on purchase of Mahua Oil Cake/Rice Bran Oil cake used in the manufacturer of solvent extracted oil is partially allowed as per process/formula prescribed in the Chapter V (INPUT TAX CREDIT) of GST Rule, 2017, because, the applicant manufacturing both taxable and exempted goods by using raw materials viz. Mahua De-oiled cake and De-oiled Rice Bran. Further, if common inputs are used for both taxable and exempted supplies, the applicant is required to reverse the credit proportional to the amount of credit pertaining to the exempted supplies immediately."*

4. Against the aforesaid declaration made by the Authority for Advance Ruling, the petitioner felt aggrieved. It filed an appeal under Section 100 of the Act, on 14.07.2018.

5. It is then stated that the first notice in the appeal proceedings was issued to the petitioner by electronic mail on 20.09.2018. Though receipt of the electronic mail is not disputed, it has been specifically stated in the writ petition that the email was issued to the petitioner at 16.19 hrs on 20.09.2018 which first came to the knowledge of the

petitioner on 24.09.2018 since 21, 22 and 23 days of September 2018, were holidays.

6. In such circumstances, it has been pleaded that the date fixed in the appeal was sudden; in any case, the actual time made available to the petitioner to respond to the notice and participate in the hearing fixed for 26.09.2018 was unrealistically short and; in any case the petitioner's counsel was in some difficulty on the date so fixed. Accordingly, an adjournment application was made by the petitioner through electronic mail, received by the Appellate Authority on 24/25.09.2018.

7. It is in this factual background that the aforesaid adjournment application was rejected by the Appellate Authority with the following observation:

"None appeared for personal hearing. Appellant vide their e-mail letter dated 24/25.09.2018 requested for postponement of the date of personal hearing to some other date in month of October due to non availability of their counsel.

As the Appellate Authority of Advance Ruling Uttar Pradesh consist of a member of the Central GST and a member of State GST and the appeal is to be decided in a time bound manner, it is not possible to extend the date of personal hearing to another date. So the appeal is being taken up for consideration based on the facts and documents available on record."

8. Thereafter, the Appellate Authority has proceeded to hear and decide the appeal on merits, which has given rise to the present writ petition.

9. Learned counsel for the petitioner has raised various grounds on merits to assail the order of the Appellate Authority as also the Authority for Advance Ruling. That challenge is not being referred to in view of the facts noted

below.

10. Besides assailing the order on merits, learned counsel for the petitioner submits that there is a procedural lapse on part of the Appellate Authority in proceeding to decide the appeal on merits in an ex-parte proceeding, that too on the first date of hearing itself. He would submit though Section 101(2) of the Act creates an expectation that the appellate authority may decide the appeal within 90 days from it being filed, however, in the present case, though the appeal was filed on 14.07.2018, no notice was issued to the petitioner for hearing in the appeal for the first more than 60 days. In that light, it has been submitted, a very short time was granted to the petitioner to appear in the appeal proceedings, inasmuch as the notice itself was issued on 20.09.2018 fixing the date 26.09.2018. No prior intimation having been given to the petitioner of the likely date of hearing being fixed to 26.09.2018, it is then submitted that on account of intervening public holidays, the petitioner was not at fault in seeking a short date/adjournment.

11. In this regard, it has also been submitted that the provisions of Section 101(2) of the Act may be directory but certainly is not mandatory and in any case there was sufficient time available even after 26.09.2018 for the Appellate Authority to decide the appeal within the stipulated period.

12. Sri Dhananjay Awasthi, learned counsel for respondent no. 5, Sri Anant Kumar Tiwari, learned counsel for respondent no. 7 and Sri B.K. Pandey, learned Standing

Counsel for respondent nos. 1, 2, 3, 4 and 6, would submit that the petitioner had adequate notice of the proceedings and it cannot complain that its appeal has been heard and decided on merits since it failed to respond on the notice for hearing.

13. Having heard learned counsel for the parties and having perused the record, in the first place, the Authority for Advance Ruling and the Appellate Authority have been constituted principally, to nip the litigation in its bud. Any assessee who seeks an advance ruling discloses his intent to avoid possible litigation, in future. He only seeks answer on an issue/question that potentially contains the seeds of future litigation. The legislative intent appears to be to provide resolution of such issues in a time bound manner.

14. Looked from that perspective, rejection of the adjournment sought for the first date fixed by the Appellate Authority, that too when the Appellate Authority itself could not convene or could not hear the matter for the first 60 days of the period contemplated under Section 101 (2) of the Act, appears wholly harsh and unreasonable on the part of the Appellate Authority to have refused the short adjournment sought, and to have proceeded to decide the appeal itself on merits.

15. The legislative intent being to provide early/prompt decision in such matters, within ninety days of institution, it would be wholly desirable for the original as also the Appellate Authority to provide for a mechanism where, upon registration of the application/appeal itself, the likely

date of hearing may first be indicated to the applicant in appeal, by electronic mail procedure itself, so that the concerned assessee may stay aware, both of the likely dates of sitting of authority and of hearing on his application/appeal and may arrange his affairs accordingly.

16. The frequency and length of the sitting/s may be facts known only to the concerned authorities depending on the number of pending applications/appeals and availability of the members on certain dates. Communication of the date of hearing at short notice, without any prior indication of the same may often result in parties seeking adjournment for that reason itself. Therefore, a procedure providing for a prior indication of likely date of listing would be enough to put the applicants/appellants to notice in that regard, keeping in mind the spirit of the Act desiring speedy disposal of such matters. Also, the notice of exact hearing may be issued by electronic mail so as to preferably allow at least 21 days' or such time as may otherwise appear proper, feasible and reasonable in the interest of justice and fair procedure.

17. In cases of repeated adjournments being sought, it may remain open to the concerned authority to impose appropriate costs while rejecting any adjournment application, in appropriate case, for just circumstances. However, to decide the appeal itself on merits, ex-parte, should really be the measure of last resort and should not be undertaken by way of first response to an adjournment application in such cases. Such a course, if followed would only result in avoidance of needless litigation and better serve the statute.

18. In view of the above, the present petition is **disposed of** at this stage itself without calling for any counter affidavit as the facts noted above are practically admitted to the parties, having been drawn from the impugned order itself.

19. The order dated 12.10.2018 passed by the Appellate Authority is set aside. The matter is remitted to the Appellate Authority to decide the petitioner's appeal afresh, as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order.

20. The petitioner undertakes not to seek any undue or long adjournments.

21. It is further directed that the observations made above with respect to the issuance of notice be also given effect in these proceedings also.

Order Date :- 14.12.2018
AHA