Court No. - 7

Case :- WRIT TAX No. - 1388 of 2018

Petitioner :- S/S Patel Hardware
Respondent :- Commissioner, State G.S.T. And 2 Others
Counsel for Petitioner :- Ved Prakash Singh
Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

1. First supplementary affidavit filed today. The same is taken on record.

2. The present writ petition raises a short but interesting question of law being whether the petitioner would have a surviving right of appeal beyond a period of 30 days from the date of the penalty order or 30 days from the date of service of that order on the driver of the truck who was found to be transporting the goods belonging to the petitioner assessee.

3. In this regard admittedly the petitioner is the owner of the goods. He had purchased certain goods from M/s Haryana Plasts Pvt. Ltd., Ladwa Road, Mathana, District Kurukkshetra vide Tax Invoice No.368 dated 10.02.2018. These goods had been consigned by driver of truck bearing registration No.HR-69B0731. The aforesaid goods were subjected to seizure proceedings under Section 107 of UP Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act'). To that extent there is no dispute.

4. However, the petitioner claims that the penalty order that was passed in consequence of such seizure proceedings dated 12.02.2018 was never served on him by the Assessing Authority. In fact, it has been disputed that that order was first communicated to the petitioner on 25.05.2018. Having thus first gained knowledge of that order the petitioner further claims to

have filed the appeal under Section 107(1) of the Act within the period of three months there from.

5. The aforesaid appeal came to be dismissed as time barred by the order dated 06.07.2018 by treating the period of limitation to have been commenced from 12.02.2018 that is the date of the order.

6. Learned counsel for the petitioner submits that in the first place the statutory forum of second appeal against the impugned order dated 06.07.2018 does not exist inasmuch as the Tribunal has yet not been constituted under the Act. That position is admitted to the State. Hence, while the present writ petition has been entertained on merits.

7. It is seen that the language of Section 107(1) of the Act provides for a period of limitation of three months from the date of communication of the order. Then Section 107(4) of the Act limits the period for which delay may be condoned in filing of such appeal to a period of one month and no more.

8. Keeping in mind the fact that the delay in filing the appeal may not be condoned beyond the period of one month from the expiry of period of limitation, the phrase "communicated to such person" appearing in Section 107(1) of the Act commend a construction that would imply that the order be necessarily brought to the knowledge of the person who is likely to be aggrieved. Unless such construction is offered, the right of appeal would itself be lost though a delay of more than a month would in all such cases be such as may itself not warrant such strict construction.

9. In the facts of the present case as well it is seen that it is largely undisputed that the impugned penalty order was served

on the driver of the truck while the penalty order is directed against the owner of the goods. Therefore, for that reason also it may be accepted that the penalty order had not been communicated to the petitioner prior to the date 25.05.2018.

10. The order dated 06.07.2018 is set aside. The Appellate Authority may condone the delay and proceed to decide the appeal as expeditiously as possible.

11. Accordingly, the present writ petition is allowed.

Order Date :- 10.12.2018
Shahroz