

Court No. - 42

Case :- WRIT TAX No. - 314 of 2020

Petitioner :- M/S Kay Pan Fragrance Pvt. Ltd.

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Pooja Talwar,A.S.G.I.

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel for the respondents.

The petitioner has preferred the instant petition under Article 226 of the Constitution challenging the penalty order dated 18.12.2017, the appellate order dated 6.1.2018 and also for a direction to the respondent authorities to refund the full amount of security deposited by the petitioner.

It is not disputed that the impugned orders are appealable under Section 112 of the C.G.S.T. Act, 2017. The appeal is to be filed within 90 days from the date on which the order sought to be appealed is communicated to the person preferring the appeal.

The instant petition has been filed by-passing the remedy of appeal under Section 112 of the Act on the ground that the appellate tribunal has not been constituted till date.

It has been pointed out by learned standing counsel that the Government, having regard to the difficulty faced by the assesseees in filing appeal on account of non-constitution of the Tribunal and its Benches in various States and Union Territories, has issued Central Goods and Service Tax (Ninth Removal of Difficulties) Order, 2019 notified in the Gazette of India dated 3rd December, 2019 stipulating that in such a situation, the three months' period shall be considered to be the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office. It is urged that in such circumstances, the petitioner can wait and avail the remedy of filing appeal as and when the Tribunal is constituted. It is also pointed out that since the seized goods have already been released, therefore, no prejudice is going to be caused to the petitioner at the present moment.

Learned counsel for the petitioner very fairly admits the above legal position and also the fact that the goods have already been released.

In view of the above, the instant petition is disposed of by providing that the petitioner can invoke the remedy of filing appeal before the Tribunal in terms of the provisions of the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.

(Manoj Kumar Gupta, J.)

Order Date :- 16.6.2020

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