

Case :- WRIT TAX No. - 292 of 2020

Petitioner :- M/S Polo International Through Its Proprietor Shri Ashutosh Sajjan Agarwal

Respondent :- State Of U.P., Through Secretary, Institutional Finance, Civil Secretariat, U.P. Govt. And 2 Others

Counsel for Petitioner :- Rishi Raj Kapoor

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta, J.

Heard Sri Rishi Raj Kapoor, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel for the State respondents.

The petitioner has preferred the instant petition under Article 226 of the Constitution challenging the order dated 26.11.2019 passed in Appeal No.GST-02/19 by respondent no.2 under Section 129 (3) of the U.P. G.S.T. Act and C.G.S.T. Act, 2017/ Section 20 of the IGST Act, 2017 and tax and penalty order No.227 dated 5.9.2018 passed by respondent no.3 under Section 129 (3) of the U.P. G.S.T. Act and C.G.S.T. Act, 2017/ Section 20 of the IGST Act, 2017 and has also prayed for a direction to respondent no.3 to refund the amount of Rs.31,377/- deposited at the time of filing of appeal before respondent no.2.

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 bye-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 :- 8.6.2020
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