

TAX INFO

Dated 21/07/2022

Latest update on GST Law: HC excludes period of writ pending with it for filing of appeal with Appellate Authority in judgement as given by Calcutta High Court.

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Name of Petitioner	Hemraj Jain
Name of Respondent	State Tax Officer
Court	Calcutta High Court
Date of Judgement	13-07-2022
Appeal No.	W.P.A. 721 OF 2022

Brief Facts of the Case Law:

The petitioner claims to have engaged the transporter on hire basis for transportation of the goods from the Consignors place of business in Assam to the place of business of the petitioner in West Bengal. On **February 25, 2022**, the Departmental officer intercepted the vehicle carrying the aforesaid consignments. On **February 28, 2022** the officer issued an order of detention of the vehicle. The SCN was issued on February 28, 2022 proposing to impose a penalty which was duly replied. Thereafter the order of demand dated **March 19, 2022** was served upon the petitioners confirming the penalty of Rs.14,26,732/-.

Contention of the Applicant:

The petitioner being the owner of the goods in question is liable to pay penalty equal to 200% of the tax payable on the goods in order to get the vehicle released. A direction may be passed upon the authority to release the vehicle including the goods in question upon accepting the said penalty as and by way of interim relief.

Contention of the Department:

The writ petition is not maintainable in view of existence of alternative efficacious appellate remedy available under the Statute. The petitioner has to approach the appellate authority and to claim release of the vehicle and the goods in question from such authority in accordance with law. There is a dispute as to whether the petitioner is the owner of the goods in question. The goods in question cannot be released in favour of the petitioner at this stage till the dispute as to who is the owner of the goods in question is resolved. Thus, even if the petitioner is agreeable to pay the penalty, the Department is not in a position at this stage to release the goods in favour of the petitioner without being prima facie, satisfied with regard to the capacity in which the petitioner is claiming release of such goods.

Decision of the Court:

Section 107 of the WBGST Act, 2017 provides that any person aggrieved by any decision or order passed under this Act by an Adjudicating Authority may appeal to such Appellate Authority as may be prescribed **within three months** from the date on which such decision or order is communicated to such person. The order being dated March 9, 2022 is an appealable order under the WBGST Act, 2017. Though the time limit prescribed for preferring appeal has expired in the meantime, it is not in dispute that this writ petition was filed on **March 22, 2022**, that is, well within the prescribed time limit for preferring such appeal. This writ petition was also pending before this Court for some time for which the petitioners cannot be faulted with.

Thus, this Court of the considered view that the petitioners will be entitled to the benefit of the period during which this writ petition was pending. This Court directed the Appellate Authority to accept the same. In that case such appeal can be said to be filed within the period of limitation after excluding the time spent in disposing of the writ petition. The Appellate Authority shall not dismiss the appeal filed in terms of the order on the ground of limitation. It will be open to the petitioners to pray for release of the goods before the Appellate Authority and if such a request is made, the Appellate Authority shall consider and dispose of the same by passing a reasoned order upon giving an opportunity of hearing to the petitioner.

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