

TAX INFO

Dated 15.10.2022

Latest update on GST Law: **Time period to file appeal starts on upload of order on GST portal as given in judgement by Andhra Pradesh High Court.**

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Name of Petitioner	Navya Foods (P.) Ltd.
Name of Respondent	Superintendent of Central Tax
Court	Andhra Pradesh High Court
Date of Judgement	21.03.2022
Appeal No.	WRIT PETITION No.1612 OF 2022

Brief Facts of the Case Law:

The petitioner is a Private Limited Company engaged in manufacture of jams, fruit jellies etc. On verification of the GSTR-3B monthly returns filed during the year 2018-19, Department found that some of the GSTR 3B returns were filed beyond the due dates and thus, resulting in delayed payment of CGST/SGST/IGST. Hence, Department demanded payment of interest and penalty of Rs.1,92,892/- and Rs.6,50,800/- respectively. For payment of the said amount, a show cause notice was issued to the petitioner on 25.4.2019. Subsequently, an assessment order, dated 15.11.2019, came to be passed by Department confirming levy of interest of Rs.1,92,892/- and a penalty of Rs.6,86,944/-, which is higher than the penalty actually proposed in the show cause notice. The said order was served on the petitioner physically on 25.11.2019. An appeal came to be filed by the petitioner vide Appeal No.10/2020(T)GST which came to be rejected on 30.7.2021 on the ground that it was filed beyond the period of limitation. Challenging the same, the present writ petition came to be filed.

Contention of the Petitioner:

In terms of Rule 142(5) of CGST/SGST Rules, a summary of the order issued under Section 73 shall be uploaded electronically in Form GST DRC-07 specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. The summary of the order was uploaded by the adjudicating authority only on 18.11.2021 and as such, the period of limitation for filing an appeal has to be reckoned from the said date. In support of the plea, a judgment, dated 05.03.2020 reported in **Gujarat State Petronet Limited vs. Union of India [R/Special Civil Application No.15607 of 2019]** was relied upon by the petitioner.

Findings and Decision of the Court:

The provisions of Section 107 make it clear that the appeal is required to be filed in an electronic mode only and if any other mode is prescribed, then, the same is required to be notified by way of a notification. There is nothing on record to show that any notification was issued prescribing any other mode by which an appeal could be filed. Therefore, the contention of the petitioner the time period for filing appeal would start only when the order is uploaded in GST portal cannot be brushed aside. The Hon'ble Supreme Court, vide its order, dated 10.01.2022, in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, extended the time period from 15.3.2020 to 28.2.2022 for the purpose of computing the period for filing the appeal. Since the order of Department, dated 15.11.2019, was sent by e-mail to the petitioner on 25.11.2019, three months' time would expire on 24.2.2020 and another one month from there would be on 24.3.2020. Taking into consideration the judgment of the Hon'ble Supreme Court referred to above, it can be, therefore, held that filing of appeal by the petitioner on 03.12.2020 is within the period of limitation. Accordingly, the order, dated 30.7.2021, in Appeal No.10/2020(T)GST passed by Department was set aside and the matter was remanded back to Department for adjudicating the dispute on merits in accordance with law.

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