

TAX INFO

Dated 21/12/2022

Latest update on GST Law: **Time lost due to technical glitches on GST Portal needs to be excluded for calculating limitation period for filing GST Appeal** as given in judgement by Allahabad High Court.

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Name of Petitioner	M/s. Brij Bihari Singh
Name of Respondent	Commissioner Commercial Tax Lucknow
Court	Allahabad High Court
Date of Judgement	04.05.2022
Appeal No.	WRIT TAX No. - 902 of 2021

Brief Facts of the Case Law:

The Appellate Authority has rejected the appeal filed by the petitioner as being time barred against the order dated 28.02.2019, passed by the Proper Officer, cancelling the petitioner's registration. The petitioner's registration under the Act was sought to be cancelled vide notice dated 28.02.2019. The petitioner submitted his reply thereto on 12.03.2019. However, in absence of the petitioner, the said registration was cancelled by an ex-parte order dated 09.08.2019. It is the grievance of the petitioner, despite best efforts, he could not file an appeal against that order for reason of continued malfunctioning/errors in the functioning of the GSTN portal (through which the appeal was to be filed). **Evidence was led by the petitioner** to establish the continued difficulties faced by him. Thus, print of screen shots (of certain dates when the petitioner attempted to file that appeal), were brought on record in the first appeal, and eventually filed on 20.09.2021. The error arising in the working of the GSTN portal was resolved on 17.09.2021. Thereupon, the petitioner received the Ticket No. G2021090862061 and received an e-mail from the GSTN authorities on 20.09.2021, informing him of the resolution made to the error in the working of the GSTN portal. The petitioner instituted the appeal through the GSTN portal on 20.09.2021. Whatever be the exact nature of communication sought to be made by the GSTN portal, it cannot be disputed that there exists clear evidence of admission made by the GSTN authority of difficulty faced by the petitioner in instituting his appeal against the order dated 28.02.2019, within the normal period of limitation, computed from the date of that order. Also, there is clear evidence of the said difficulty having been first resolved on 17.09.2021, well after expiry of the statutory period of limitation and the extended period of limitation, to file the appeal under Section 107 of the Act.

Findings and Decision of the Court:

Since the petitioner had been disabled from filing appeal (electronically) through the prescribed mode, against the order dated 09.08.2019, for reasons attributable solely to the GSTN authority and not for reasons attributable to the petitioner, it has to be assumed, for the limited purpose of the dispute at hand that the forum of appeal was first made available to the petitioner on 17.09.2021, and not earlier. It is so because 17.09.2021 was the date when GSTN authority first resolved the technical issues that had restrained or prevented the petitioner from approaching the appeal authority to file his appeal, against the order dated 09.08.2019. The statutory right of appeal is not an illusory remedy given to the assessee or a person aggrieved. It is an effective and real remedy granted within the structure of the statute to allow for redressal of genuine grievances. Therefore, the appeal forum must be seen to exist and be freely available to the person seeking to approach it. There must exist no obstruction to access it within time and opportunity granted by the statute, to institute the appeal, before that authority.

In the present case, on a technical construction of the statute, the period of limitation to file an appeal against the order dated 09.08.2019 may appear to run from the date of the order being communicated to the petitioner i.e. 09.08.2019 itself. At the same time, that construction has to be rejected. It is so because, against the order dated 17.09.2021, no appeal could have been filed by the petitioner as it remained completely prevented/obstructed from filing such appeal, owing to technical glitches suffered by the GSTN portal on which that appeal may have been filed. In face of clear evidence existing on record that such technical glitches were resolved by the GSTN authority on 17.09.2021, the period of limitation to file appeal started running from that date only. For the period 09.08.2019 to 17.09.2021, the period of limitation to file the appeal must always be deemed to have remained suspended for reason of appeal forum being not made available for filing of appeal by the petitioner, through prescribed mode.

Accordingly, the appeal was filed by the assessee on 20.09.2021, within time. The Appeal Authority has completely erred in rejecting the appeal as time barred. Thus, the order dated 12.10.2021 was quashed. The matter was remitted to the Appeal Authority to hear and decide the appeal on merits, treating the same to have been filed within time.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>