

Condonation of delay is applicable for a period of one month only and not beyond

The Hon'ble Kerala High Court in the case of *M/s. Isha Holidays Private Limited v. The Commissioner, SGST Department & Ors. [W.P.(C) No. 30666 of 2023 dated September 25, 2023]*, dismissed the petition and held that the Appellate Authority has been vested with the power to condone the delay only by one month by satisfying that there exists a sufficient cause, which prevented the assessee from presenting the appeal beyond the period of three months.

Facts:

The Assessment order dated July 25, 2022 ("**the Impugned Order**"), was passed against M/s. Isha Holidays Private Limited ("**the Petitioner**") under Section 73(1) of the Central Goods and Service Tax, 2017 ("**the CGST Act**") amounting to Rs.4,52,826/- for tax period 2017-2018.

Aggrieved by the Impugned Order, the Petitioner filed an appeal under Section 107 of the CGST Act before the Appellate Authority ("**the Respondent**"). The Respondent, after evaluating the case, dismissed the appeal on the ground that the appeal was barred by limitation as there was a delay of 144 days under Section 107(1) read with Section 107(4) of the CGST Act.

Aggrieved by the decision of the Respondent, the Petitioner filed the writ petition before this Hon'ble Court under Article 226 of the Constitution of India.

Issue:

Whether the Appellate Authority has the power to condone delay beyond the period of one month as prescribed under Section 107(4) of the CGST Act?

Held:

The Hon'ble Kerala High Court in *W.P.(C) No. 30666 of 2023* held as under:

- Observed that, the Petitioner could not enumerate upon any powers vested with the Respondent under which the delay could be condoned beyond the period of four months.
- Opined that, as per Section 107(1) of the CGST Act, the appeal had to be filed within the period of three months before the Respondent. Upon which the Respondent has the power to condone the delay by one month, if satisfied that there exists a sufficient cause.
- Held that, there are no powers vested with the Respondent to condone the delay beyond the period of four months as per Section 107(1) read with Section 107(4) of the CGST Act. Hence, dismissed the writ petition.

Relevant Provisions:

Section 107(1) and (4) of the CGST Act:

Appeals to Appellate Authority.

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2)

(3)

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

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