

Appellate authority cannot condone delay beyond the time limit prescribed under the GST law: Orissa HC

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Summary

The Orissa High Court (HC), in a recent case, held that the Appellate Authority cannot condone delay beyond the prescribed time limit under the Goods and Services Tax (GST) law. The HC further stated that when the statute is clear about the limitation, even the Court cannot exercise their Constitutional powers to direct the appellate authority to entertain the appeal.

Facts of the case

- The petitioner¹ filed an appeal before the appellate authority beyond the limitation period of four months².
- The authority dismissed the appeal on the ground of delay.
- The petitioner filed a writ before the Orissa HC along with medical reports to justify his delay in approaching the authority.

Orissa HC observations and order

- **Cannot direct the appellate authority to entertain the appeal:** The HC observed that the appeal in question against cancellation of the registration certificate is to be filed within three months and if the appeal is not filed within that period, the authority can condone

delay up to a period of one month thereafter.

Thus, the HC held that when the law is clear about the limitation, it cannot direct the authority to entertain the appeal³.

- **Direction to petitioner:** The HC advised that the petitioner may file a detailed representation before the GST authorities within three weeks from the date of the order for restoration/re-issuance/ issuance of the registration certificate. Further, it directed the petitioner to rectify all the defects and pay the balance tax, if any.
- **Direction to GST authorities:** The HC directed the authority that the representation (filed by the petitioner) shall be disposed of in accordance with law, taking a liberal view of the matter.

¹ Mr. Debabrata Mishra

² U/s Section 107 of the CGST Act, 2017

³ In exercise of jurisdiction under Article 226 of the Constitution of India

Our comments

This is an important decision by the Orissa HC, wherein the court has clearly indicated that where the statute is unambiguous as regards any provision, the same needs to be interpreted strictly.

The powers of appellate authority to condone delay in filing appeal has always been a matter of extensive litigation, even under the erstwhile indirect tax regime. In a landmark judgment⁴, the Supreme Court (SC) had held that the term 'sufficient cause' means adequate or enough and there cannot be a straitjacket formula for accepting or rejecting the explanation furnished for delay caused in taking steps. The SC further held that to hold that this appellate authority could entertain appeal beyond extended period provided under the law would render the phrase 'not exceeding thirty days' ineffective and no principle of interpretation would justify such a result.

⁴ M/S Singh Enterprises vs Commissioner of Central Excise (Civil Appeal No 5949 of 2007)

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