

Case :- WRIT TAX No. - 76 of 2022

Petitioner :- M/S J.K Infratech

Respondent :- Additional Commissioner And Another

Counsel for Petitioner :- Aditya Pandey, Bipin Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

1. Heard Shri Aditya Pandey, learned counsel for the petitioner and Shri Jagdish Mishra, learned Standing Counsel.

2. Challenge has been raised to the order dated 16.07.2021 passed by the Additional Commissioner Grade II (Appeal), Commercial Tax, Sonbhadra, whereby the said authority has dismissed the appeal no. GST-09/2021 filed by the petitioner against the order dated 17.9.2019 passed by Assistant Commissioner, Sector-3, Commercial Tax, Sonbhadra, cancelling the petitioner's registration. The appeal has been dismissed by the Appeal Authority as time barred.

3. Having heard learned counsel for the parties and having perused the record, it transpires, the registration cancellation order dated 17.9.2019 was passed *ex-parte* pursuant to a notice claimed to be served through the common portal. The petitioner could not reply to the same as he claimed lack of knowledge. Thereby, *ex-parte* order was passed on 17.9.2019 cancelling the petitioner's registration. The said order is claimed to have been served to the petitioner again through the common portal on 17.9.2019 itself. The physical copy of the order dated 17.9.2019 was never served on the petitioner. Meanwhile, Government of U.P. issued Government Order no. 792 dated 29.7.2020 providing, in cases involving facts such as those obtaining in the present case, the service of the orders would be deemed to have been made on 31.8.2020. Then the period of limitation to institute appeal etc., stood suspended by various orders passed

by the Supreme Court as also this Court. Thus the period of limitation from 15.3.2020 to 14.3.2021 stood suspended.

4. In view of the above facts, the present petition deserves to be allowed as the limitation to file first appeal under Section 107 of the U.P. GST Act, 2017, was three months with delay condonable for a period of one month. Once the order dated 17.9.2019 is taken to have been served on the petitioner on 31.8.2020, then in view of the suspension of limitation from 15.3.2020 to 14.3.2021 the limitation to file the appeal would start running from 15.3.2021. In that case, the appeal having been filed on 19.3.2021, the same was wholly within time.

5. For the reasons contained above, the impugned order dated 16.07.2021 passed by the appeal authority cannot be sustained. It is set aside. The matter is remitted to the appeal authority to proceed to hear and decide the appeal filed by the petitioner dated 19.3.2021, on merits, treating the same to have been filed within time.

6. Accordingly, the present petition is **allowed**.

Order Date :- 24.2.2022
Prakhar