HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 9319/2024

Balaji Enterprises, Ward No. -18, Near Krishana Takij, Bhadra, District- Hanumangarh, Through Its Proprietor Kanhaiya Lal Son Of Shri Madan Lal, Aged About 42 Years.

----Petitioner

Versus

1. Union Of India, Through Its Secretary, Department Of Revenue, Ministry Of Finance, North Block, New Delhi.
2. State Of Rajasthan, Through The Secretary, Ministry Of Finance, Secretariat, Jaipur.
3. State Of Rajasthan, Through The Secretary, Ministry Of Finance, Secretariat, Jaipur.
4. Assistant Commissioner, Ward-Iii-Nohar, Circle A, State Goods And Service Tax, Hanumangarh.

----Respondents

For Petitioner(s)	:	Mr. Sharad Kothari Mr. Pranjul Mehta Mr. Dinesh Kumar Bishnoi Mr. Kalpit Shishodia Mr. Chirag Soni
For Respondent(s)	:	Mr. Bharat Vyas, Sr. Advocate, A.S.G. assisted by Mr. Vaibhav Bhansali Mr. Mahaveer Bishnoi, A.A.G. Mr. Rajvendra Saraswat Mr. Rishabh Dadhich Mr. Rajat Arora Mr. Nilesh Choudhary for Mr. Kuldeep Vaishnav

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HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Order (Oral)

27/03/2026

Per: Arun Monga, J.

1. The petitioner herein, inter alia, seeks a direction commanding respondents to entertain the appeal and also condone the delay and allow the filing of appeal against the impugned order dated 28.08.2023 (Annexure-4), passed by the Assistant Commissioner, whereby GST demand of

Rs.50,24,925.34/- for Financial Year 2021-22 was raised on the account of excess availment of Input Tax Credit by the petitioner. The appeal against the said order could not per force be filed before the Appellate Authority as the online status of the appeal would reveal that the same is time-barred. The petitioner is thus left remediless. Hence, the petitioner, without availing the remedy of appeal, has preferred this instant writ petition.

2. Learned counsel for the petitioner submits that the delay in filing the present appeal has occurred due to circumstances beyond the control of the petitioner. The appeal against the impugned Order-in-Original dated 28.08.2023 could not be filed within the prescribed limitation period as stipulated under the statutory provisions, which required the same to be filed within a period of three months, along with a further condonable period of one month. The delay in filing the present appeal is neither wilful nor deliberate.

2.1 It is further submitted that the petitioner firm has never availed any excess Input Tax Credit for the period from April 2021 to March 2022 and has at all times acted bona fide and in compliance with the provisions of law. However, due to lack of proper and effective communication between the consultant and the petitioner firm, the petitioner was unable to take timely steps to respond to the Show Cause Notice dated 04.07.2023, which ultimately resulted in the passing of the impugned Order-in-Original dated 28.08.2023.

2.2 Further, on account of the poor financial condition of the petitioner-firm, it was unable to pursue the matter diligently and consequently could not file the appeal within the prescribed period. The delay is thus bona fide, unintentional, and deserves to be condoned in the interest of justice.

3. In the aforesaid backdrop, we have heard the learned counsels for the parties and perused the record.

4. Learned Counsel for the petitioner, relying on the various Division Bench judgments of this very Court in **M/s M R Traders v. UOI**[1], **M/s Molana Construction Company v. Central Goods and Service Tax Department & Ors**[2], **Man Singh Tanwar v. Commissioner, Central goods and Services Tax Department & Ors.**[3], **RPC PSIPL JV Vs. State of Rajasthan & Ors**[4] **and RPC PSIPL JV Vs. State of Rajasthan & Ors**[5] argues that sufficient cause of delay in filing the appeal due to circumstances beyond control has been shown and thus appeal be directed to be considered on merits after condoning the delay by this Court.

5. Learned counsels for the respondents oppose the above submission and contends that the impugned order has rightly been passed and appeal is now barred by limitation.

6. Having heard, as above, it transpires that while it is true that the Appellate Authority is bound by the statutory provisions of limitation provided under Section 107 of the RGST/CGST Act, 2017, however, considering the reasons owing to which the petitioner could not submit its appeal within the stipulated time,

1 D.B. CWP 4558/2025/SCC
2 D.B. CWP 12076/2024
3 D.B. CWP 14658/2024
4 D.B. CWP 7260/2025
5 D.B. CWP 11794/2025

being beyond its control, non-adjudication of appeal on merits would cause grave injury and prejudice to the petitioner.

7. In the judgments cited above, this Court, while allowing the writ petitions, have issued directions to entertain the appeal on merits.

8. In the premise, following the consistent view as already taken by this Court, *ibid*, we allow the present writ petition to the extent of condoning the delay in filing of the appeal by the petitioner.

9. Accordingly, the Appellate Authority is directed to now entertain the appeal of the petitioner and adjudicate the same on merits.

10. Before parting, we may also hasten to add that as regards challenge to the validity of Section 107(4) of the CGST Act, 2017 read with Notification No. 53/2023 dated 02.11.2023 issued by Director, Central Board of Indirect Taxes and Customs and in view of the aforesaid order passed by this Court, learned counsel for the petitioner submits that the said challenge is not being pressed in the present matter, with liberty to raise and pursue the same in appropriate proceedings. The issue qua the *vires* of the same is thus left open to be adjudicated in appropriate proceedings in future.

11. Stay petition and all pending application(s), if any, stand(s) disposed of.

(SUNIL BENIWAL),J **(ARUN MONGA),J**

65-KP Singh Dewasi/-