L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

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High Court cannot disregard statutory period of limitation while exercising power under Article 226

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ISSUE

- Whether the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India ought to entertain a challenge to the assessment order on the sole ground that the statutory remedy of appeal against that order stood foreclosed by the law of limitation?

FACTS

- The Respondent, a VAT assessee in the state of Andhra Pradesh, challenged an assessment order dated June 21, 2017 passed by the VAT authority by way of statutory appeal before the Appellate Deputy Commissioner on September 24, 2018, which was beyond the statutory period. The Appellate Deputy Commissioner dismissed the appeal as being barred by limitation and also on the ground that no sufficient cause was made out for the delayed filing of the appeal.

- Without challenging the order passed by the Appellate Deputy Commissioner, the Respondent filed a writ petition under Article 226 before the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh (**"High Court"**).

- The Writ Petition was allowed by the High Court and the order passed by the Assistant Commissioner, dated June 21, 2017 was quashed and set aside. The Respondent was relegated before the Assistant Commissioner for reconsideration of the matter afresh after giving personal hearing to the Respondent to explain the discrepancies.

- Aggrieved by the order of the High Court, the Appellants approached the Supreme Court on the ground that the High Court ought not to have entertained the writ petition for the following reasons: (i) the Respondent did not file the appeal within the statutory time limit; (ii) the delay in filing the appeal was not satisfactorily explained by the Respondent; and (iii) the Respondent did not challenge the order of the Appellate authority and it has attained finality.

FINDINGS OF THE SUPREME COURT

- Under *Andhra Pradesh Value Added Tax Act, 2005* (**"AP VAT Act"**) the appellate authority is not empowered to condone delays beyond the aggregate period of 60 days from the date of order or service of proceeding on the assessee, as the case may be. In the present case, the appeal was filed way beyond the total 60 days' period specified in terms of Section 31 of the AP VAT Act.

- The appellate authority *vide* order dated October 25, 2018, considered the reasons offered by the respondent for the delay in filing of the appeal and concluded that the same were not substantiated with sufficient cause.

- The High Court allowed the writ petition *vide* the impugned judgment on the ground that the statutory remedy had become ineffective for the Respondent due to expiry of 60 days from the date of service of the assessment order.

- The High Court ought not to have entertained a writ petition against any order or direction passed / action taken by the State, under Article 226 of the Constitution, when the aggrieved person could have availed of an effective alternative remedy of filing an appeal in the manner prescribed under the AP VAT Act.

- Even while acting under Article 142 of the Constitution, the Supreme Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. The powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on the Supreme Court under Article 142.

RATIO OF THE JUDGMENT

- The fact that the High Court has wide jurisdiction under Article 226 of the Constitution, does not mean that it can disregard the substantive provisions of a statute and pass orders which can be settled only through a mechanism prescribed by the statute.

- In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified.

- If the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period prescribed under the statute, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course.

WAY FORWARD

- Going forward, the High Courts may not entertain writ petitions directly against an appealable order after expiry of the statutory period for filing appeals against such orders. Therefore, it is advisable for the litigants to file appeals before the appropriate authorities/courts within the period of limitation.

- In case of delay in filing appeals, statutes provide for filing applications for condonation of delay in filing within the specified period. While making such applications, reasons for seeking condonation of delay must be suitably and sufficiently explained.

[*Assistant Commissioner* v. *Glaxo Smith Kline Consumer Health Care Limited* – Judgment dated May 6, 2020 in Civil Appeal No. 2413/2020, Supreme Court]

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