

Penalty reduced from Rs.56 lakh to 10k in case of delay in payment of tax collected by Supplier

The Hon'ble Allahabad High Court in the case of Clear Secured Services Private Limited v. Commissioner, State Tax GST UP, [Writ Tax No. 5 of 2023 dated November 23, 2023] allowed the writ petition and reduced the amount of penalty from Rs.56,00,952.72/- to Rs.10,000/-, thereby holding that, the maximum penalty of Rs.10,000/- could be imposed by the Revenue Department, when no amount of tax has been evaded by the Assessee and there is only delay in depositing the amount of tax collected by the Supplier.

Facts:

Clear Secured Services Private Limited ("the Petitioner") is a private limited company engaged in the business of providing manpower supply services. The Revenue Department ("the Respondent") issued a Show Cause Notice dated May 27, 2021 ("the SCN") wherein it was alleged that the Petitioner has collected the GST, but the said tax has not been paid by the Petitioner, as per Section 122(1)(iii) of the Central Goods and Services Tax ("the CGST Act"). The Petitioner could not file the reply due to COVID-19, thus, the Respondent, vide ex-parte order dated August 25, 2021 ("the Impugned Order") passed against the Petitioner, imposed a penalty of the amount of Rs.28,00,476.36/- towards CGST and SGST each, thus the amount of Rs.56,00,952.72/- penalty was imposed by the Respondent

Aggrieved by the order passed by the Respondent, the Petitioner filed an appeal, the Respondent vide order September 14, 2022 ("the Impugned Order") dismissed the appeal filed by the Petitioner and upheld the imposition of the penalty.

Aggrieved by the Impugned Orders, the Respondent filed a writ petition before the Hon'ble Allahabad High Court contending that, as per Section 122(1)(iii) of the CGST Act, wherein the maximum penalty of Rs.10,000/- could be imposed on the Petitioner as admittedly no tax has been evaded by the Petitioner. Issue: Whether a penalty of Rs.56,00,952.72/- could be imposed when there is only a delay in depositing the amount of tax collected by the Supplier? Held: The Hon'ble Allahabad High Court in the case of Writ Tax No. 5 of 2023 held as under:

- Observed that, the Government has issued guidelines for waiving of late fees for filing returns vide Notifications dated June 1, 2021 ("the Notification"). The Court stated that the aforementioned factor has to be taken into consideration along with the factors stated in Section 126(2) of the CGST Act while imposing the penalty.
- Noted that, there is no material on record or even an allegation that the amount has been collected but not paid or evaded. The Respondent only alleged that the Petitioner had not paid the amount within the prescribed period i.e., three months from the date on which such payment becomes due.
- Opined that, the maximum penalty of Rs.10,000/- could be imposed by the Respondent on the Petitioner as no amount of tax has been evaded by the Petitioner. Also, the Court stated that the amount of penalty of Rs.10,000/- could have been lowered by the Respondent if the mandate of Section 126(2) of the CGST Act along with the Notifications was taken into consideration, which was not done by the Respondent.
- Held that, the Impugned Orders are set aside. Hence, the writ petition is allowed.

- Directed that, the Petitioner shall pay the penalty of Rs.10,000/- within two weeks from the date of order. Relevant

Provisions:

Section 122(1)(iii) of the CGST Act: “Where a taxable person who:

- (i)
- (ii)
- (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.”