HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 867/2021
CNR: RJHC020044042021 | URN: CW / 2305U / 2021

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M/s Sika India Pvt. Ltd., F1-3, RIICO Industrial Area, Phase-II, Bagru, Jaipur (Raj.) Through Its Authorised Representative Shri Rajkumar Kundu Son Of Shri Kinkar Kundu, Resident Of F-215, Vaishali Nagar, Jaipur 302021

----Petitioner

Versus

1. The State Of Rajasthan, Through The Secretary To The Government Of Rajasthan, Ministry Of Finance, Jaipur, Rajasthan.
2. The Commissioner, Commercial Taxes Department, Rajasthan, Kar Bhawan, Jaipur, Rajasthan.
3. The Assistant Commissioner/commercial Taxes Officer, Special Circle- Xi, Pathyapustak Mandal Parisar, Commercial Taxes Department, Jhalana Institutional Area, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. Gagan Sharma, Adv. for Mr. Sanjay Rahar, Adv.
For Respondent(s)	:	Ms. Chelsi Agarwal, AAAG and Mr. Kuldeep Singh Rathore, AAAG for Ms. Mahi Yadav, AAG

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order(Oral)

06/08/2026

Per: Arun Monga, J.

1. The petitioner seeks quashing of the assessment order dated 18.12.2018 passed by the Commercial Taxes Officer, Special Circle XI, Jaipur, and the consequential demand notice dated 02.04.2019, whereby a demand of Rs. 21,24,470/- towards entry tax, interest and

penalty was raised. The petitioner also seeks refund of the recovered amount, totalling Rs. 21,24,470/-, along with interest.

2. Briefly stated, the facts are that the petitioner is a Private Limited Company incorporated under the provisions of the Companies Act, 1956. It is engaged in the manufacturing, marketing and distribution of products relating to waterproofing, thermal and acoustic insulation. One of its plants and factories is situated at F-1-3, RIICO Industrial Area, Phase II, Bagru, Jaipur. Mr. Raj Kumar Kundu is authorised to file the present petition on behalf of the petitioner.

2.1 The petitioner company is engaged in its business activities and claims to have been regularly complying with its statutory tax obligations. The petitioner company was assessed under the Rajasthan Value Added Tax Act, 2003 for the Assessment Year 2015-16 on 20.02.2018. Thereafter, the petitioner received a notice dated 19.11.2018. Pursuant thereto, respondent No. 3 passed an assessment order dated 18.12.2018 under Sections 12, 34A and 35 of the Rajasthan Entry of Goods into Local Areas Act, 1999 (hereinafter referred to as the "Act of 1999"), read with Section 174 of the Rajasthan Goods and Services Tax Act, 2017 (hereinafter referred to as the "Act of 2017"). By the said order, a demand of Rs. 21,24,470/- was raised against the petitioner.

2.2 Out of the aforesaid demand, an amount of Rs. 7,35,709/- was recovered by respondent No. 3 through attachment of the petitioner's bank account. An amount of Rs. 13,88,761/- was deposited by the petitioner under protest. The petitioner has stated that the said amount was deposited to avoid further recovery proceedings. As per the assessment order dated 18.12.2018, the demand comprises Rs.

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15,35,846/- towards entry tax, Rs. 5,83,624/- towards interest and Rs. 5,000/- towards penalty.

2.3 Aggrieved, the petitioner submitted a representation dated 24.12.2020 against the assessment order dated 18.12.2018 before the concerned authorities. The petitioner has stated that no order was passed on the said representation.

2.4 Hence, the instant writ petition.

3. Learned counsel for the petitioner argues that the impugned assessment order dated 18.12.2018, passed under Sections 12, 34A and 35 of the Act of 1999, is beyond the period prescribed under Section 12(6) of the Act of 1999. He further contends that Section 12(6) prescribes a limitation of two years from the end of the relevant year for making an assessment, subject to the exceptions contained therein. According to learned counsel, the relevant year in the present case is F.Y. 2015-16. Therefore, the assessment order dated 18.12.2018 was passed beyond the prescribed period of limitation. It is also submitted that no notice for assessment was received by the petitioner within the prescribed period of limitation.

3.1 Learned counsel for the petitioner further contends that the impugned order has been passed without jurisdiction and is contrary to the provisions of Section 12(6) of the Act of 1999. He submits that the assessment order, having been passed beyond the prescribed period of limitation, cannot be sustained in law.

4. In response to the aforesaid submissions, learned counsel for the respondents argues raising the following preliminary objection which have been taken in the reply filed by the respondents:-

> *"A. That the petitioner has filed the abovementioned writ petition assailing the validity of impugned order dated 18.12.2018 passed by the respondent no.3, i.e. the assessing authority. Whereas, Section 23 of the Rajasthan Entry of Goods into Local Areas Act, 1999*

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(hereinafter referred to as "the Entry Tax Act") provides for appeal against the said order before the Appellate Authority. Therefore, an efficacious alternate remedy was available to the petitioner. As the petitioner has failed to avail the said alternate remedy against the impugned order dated 18.12.2018, the petitioner cannot be permitted to maintain abovementioned writ petition and therefore the same being not maintainable deserves to be dismissed.

B. That under Section 23 of the Entry Tax Act a time period of thirty days is available to prefer an appeal against an assessment order. Further, the Appellate Authority may entertain an appeal beyond the period of thirty days upon howing of sufficient cause. The petitioner was always aware of the proceedings carried on against it as the show cause notice was served upon the petitioner when it was resent on 19.11.2018. The petitioner was also aware of the impugned order dated 18.12.2018 passed by the Assessing Authority. In the above circumstances, the petitioner having failed to avail the efficacious alternative remedy, the petitioner cannot be permitted to maintain abovementioned writ petition and therefore the same being not maintainable deserves to be dismissed.

C. That without prejudice to the foregoing paragraphs, the writ petition deserves to be dismissed on the grounds of delay and laches. The impugned order is dated 18.12.2018 whereas the writ petition has been filed only on 16.01.2021. The writ petition is bereft of any explanation for such a long delay of almost 2 years from the expiry of the prescribed period of filing appeal under Section 23 of the Entry Tax Act and for this reason also the instant writ petition deserves to be dismissed.

D. That without prejudice to the above, this Hon'ble Court may not entertain the present writ petition as there has been no jurisdictional error pointed out by the petitioner against the assessing authority which has passed the impugned order nor there is violation of principles of natural justice as the show cause notice dated 19.11.2018 was served upon the petitioner. Hence, for this reason also the writ petition is not maintainable."

5. In the aforesaid backdrop, we have heard learned counsel for both the parties and perused the case files.

6. At this stage, it would be apposite to refer to Section 23 of the Rajasthan Tax on Entry of Goods into Local Area Act, 1999. For ready reference, the same is reproduced hereinbelow:

"23. Appeals.—

(1) Any person objecting to an order affecting him passed under the provisions of this Act may appeal to such authority as may be prescribed (hereinafter referred to as the appellate authority).

(2) The appeal shall be preferred within thirty days,--

(i) in respect of an order of assessment, from the date on which the notice of assessment was served on the appellant, and

(ii) in respect of any other order, from the date on which the order was communicated to the appellant:

Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid if it is satisfied

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that the appellant had sufficient cause for not preferring the appeal within that period.

(3) (a) No appeal against an order of assessment shall be entertained by the appellate authority unless it is accompanied by satisfactory proof of the payment of the tax penalty not disputed in the appeal;

(b) Notwithstanding that an appeal has been preferred under sub-section (1), the tax or other amount shall be paid in accordance with the order against which the appeal has been preferred:

Provided that the appellate authority may in its discretion, give such direction as it thinks fit in regard to the payment of tax or other amount payable under clause (b) if the appellant furnishes sufficient security to its satisfaction in such form and in such manner as may be prescribed,

(4) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(5) In disposing of an appeal, the appellate authority may, after giving the appellant a reasonable opportunity of being heard,

(a) in the case of an order of assessment or penalty,--

(i) confirm, reduce, enhance or annul the assessment or penalty or both; or

(ii) set aside the assessment and direct the assessing authority to make a fresh assessment after such further enquiry as may be directed; and

(iii) pass such other orders as it may think fit.

(b) Every order passed on appeal under this section shall, subject to the provisions of sections 24, 25, 27 and 28, be final."

7. A bare perusal of the aforesaid provision shows that the Act of 1999 is a complete code in itself providing remedies against an order of assessment. The appellate authority under Section 23(5) is clothed with wide powers. It can confirm, reduce, enhance or annul the assessment or penalty. It can even set aside the assessment and direct a fresh assessment. Every ground now urged before us, including the ground of limitation under Section 12(6), can effectively be urged before, and examined by, the appellate authority. The remedy of appeal is, therefore, not only alternative but equally efficacious.

8. We may also notice that the conduct of the petitioner does not commend itself for the exercise of discretionary jurisdiction. The impugned order is dated 18.12.2018. The petitioner neither preferred the statutory appeal within thirty days nor approached this Court with promptitude. Instead, it chose to submit a representation dated

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24.12.2020, that is, after about two years, and filed the present petition only on 16.01.2021. However, since we are relegating the petitioner to the alternative remedy, we refrain from finally pronouncing on the plea of delay and leave all such aspects open to be considered by the appellate authority.

9. There is yet another reason which dissuades us. The controversy raised involves disputed questions of fact. Whether the notice of assessment was issued and served within the period prescribed under Section 12(6) of the Act of 1999, on which date it was served, and whether any of the statutory exceptions extending the period stood attracted, are all matters resting on the record of the assessing authority. In the exercise of our extraordinary jurisdiction under Article 226 of the Constitution, we are not in a position to adjudicate such disputed questions of fact on the basis of self serving affidavits of the parties. The writ court neither records evidence nor tests the veracity of rival factual assertions. Such an exercise is alien to summary proceedings under Article 226.

10 We are conscious that the present petition was filed in the year 2021 and has remained pending before this Court for a considerable time. However, mere long pendency of a petition cannot, by itself, furnish a ground to adjudicate the lis, particularly when the relevant material is not on record before us. Pendency does not cure the inherent limitation of the writ court in resolving disputed questions of fact. In any case, the said material has to be gone into by the competent statutory authority, which is equipped to summon the assessment record, examine the factual position and return findings thereon in accordance with law.

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11. In view of the aforesaid, an equally efficacious alternative remedy being available under Section 23 of the Act of 1999, and the matter otherwise involving disputed questions of fact incapable of resolution in writ jurisdiction, we are not inclined to exercise our extraordinary writ jurisdiction.

12. We hasten to add that we have not examined the merits of the rival contentions, including the plea of limitation under Section 12(6). All contentions of both sides are left open to be urged before the appellate authority.

13. So far as the requirement of pre deposit under Section 23(3) of the Act of 1999 is concerned, we take note of the fact that an amount of Rs. 7,35,709/- already stands recovered from the petitioner through attachment of its bank account. A further amount of Rs. 13,88,761/- stands deposited by the petitioner under protest. The entire demand of Rs. 21,24,470/- thus stands realised. The said amounts shall be treated as compliance with the requirement of Section 23(3), subject to verification and satisfaction of the appellate authority. No further recovery shall be effected against the petitioner in respect of the impugned demand during the pendency of the appeal, if filed within the time granted hereinabove. The prayer for refund of the amounts recovered and deposited is also expressly left open. The same shall be subject to the outcome of the appeal and shall be considered by the appellate authority in accordance with law.

14. The petition is accordingly disposed of with liberty to the petitioner to avail the remedy of appeal under Section 23 of the Rajasthan Tax on Entry of Goods into Local Area Act, 1999. The petitioner shall be at liberty to file the appeal along with an appropriate application seeking condonation of delay. If such an appeal is filed

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within a period of thirty days from today, the appellate authority shall consider the application for condonation of delay in accordance with law, keeping in view the time spent by the petitioner in prosecuting the present petition before this Court.

15. The appeal shall be decided on its own merits, uninfluenced by any observation made hereinabove. Pending applications, if any, also stand disposed of. No order as to costs.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

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