GAHC010018032024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/476/2024

SURENDRA STEELS PVT LTD
16, GROUND FLOOR, CHARU MARKET, SRCB ROAD, FANCY BAZAR, GUWAHATI, ASSAM-781001, REP THROUGH THEIR AUTHORIZED DIRECTOR MR. SIDDHARTH AGARWAL, AGED ABOUT 34 YEARS , S/O- PRADEEP KUMAR AGARWAL

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF FINANCE , DEPARTMENT OF REVENUE, NORTH BLOCK, NEW DELHI-01

2:THE PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX AND CENTRAL EXCISE
GST BHAWAN
KEDAR ROAD
GUWAHATI-01

3:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX DIVISION I
GST BHAWAN
KEDAR ROAD
GUWAHATI-01

4:THE SUPERINTENDENT
GOODS AND SERVICE TAX AND CENTRAL EXCISE RANGE -1A
212
2ND FLOOR
GST BHAWAN
KEDAR ROAD
GUWAHATI-01

5:THE ASISTANT AUDIT OFFICER
GSTA/PARTY III

O/O A.G (AUDIT)
ASSAM BUILDING
2ND FLOOR
BELTOLA
GUWAHATI-2

Advocate for the Petitioner : MR. D SARAF

Advocate for the Respondent : DY.S.G.I.

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

Date : 20-02-2024

Assail is made in the present writ petition instituted under Article 226 of the Constitution of India to an Order-in-Original bearing no. 04/R-1A/CGST/2023-24 passed on 23.11.2023 by the Superintendent, GST & Central Excise, Range-1A, Division-I, Guwahati as the Adjudicating Authority.

2. In order to appreciate the nature of assail made, it is necessary to narrate the events, in brief, leading to the passing of the Order-in-Original bearing no. 04/R-1A/CGST/2023-24 on 23.11.2023 ['the Order-in-Original', for short], at first.

3. The petitioner, a private limited company incorporated under the Companies Act, has stated that it deals in goods like GC Sheets, etc. With the advent of the GST regime with the enactment of the Central Goods and Services Tax Act, 2017 and other related Acts, the petitioner company got itself registered under the GST regime vide Registration no. 18AAICS6451J4ZU.

4. In view of the provisions incorporated for transitional arrangements for input tax credit in Section 140 of the Central Goods and Services Tax Act, 2017 ['the CGST Act, 2017', for

short], the petitioner filed the prescribed form in TRAN-1 and availed transitional credit of Rs. 1,73,35,575/-, out of which an amount of Rs. 17,78,225/- ['the total TRAN Credit', for short] was claimed under Table 7[b] of TRAN-1 on the basis of 21 nos. of invoices. Out of the total TRAN Credit amount of Rs. 17,78,225/-, an amount of Rs. 2,11,508/- [hereinafter referred to as 'the impugned TRAN Credit', for easy reference] was claimed against two invoices, that is, [i] Invoice no. 1741007321 dated 28.06.2017 for Rs. 47,552/- and [ii] Invoice no. 1741007322 dated 28.06.2017 for Rs. 1,63,956/- [hereinafter collectively referred to as 'the impugned TRAN Invoices', for short].

5. In respect of the impugned TRAN Invoices, the respondent authorities had first issued an Objection vide Letter no. C. No. I[22]01/AG-Tran-1/R-1A/GHY/2021-22/11 dated 05.08.2021 stating *inter alia* that the credit claimed by the assessee-noticee to the extent of Rs. 2,11,508/-, vide the impugned TRAN Invoices, was in contravention of the provisions contained in sub-section [5] of Section 140 of the CGST Act, 2017. The ground of objection was to the effect that the impugned TRAN Invoices were entered into the recipients' Books of Accounts on 31.07.2017 whereas Section 140[5] of the CGST Act, 2017 has prescribed for recording of such invoices in the Books of Accounts within a period of thirty days from *the appointed day*.

6. Thereafter, a Show Cause Notice bearing no. IV[16]03/MISC/GST/TRAN-1/R-1A/2020[Pt-1]/258 dated 26.09.2023 had been issued to the assessee-noticee by the Adjudicating Authority. In the said Show Cause Notice, the stand of the Adjudicating Authority was to the effect that though the assessee-noticee was informed vide an Objection Letter dated 05.08.2021 about inadmissibility to avail credit to the extent of Rs. 2,11,508/- beyond a period of thirty days, the assessee-noticee had neither submitted any documentary evidence in support of his alleged ineligible claim nor reversed the allegedly availed excess credit till 26.09.2023. As per the said Show Cause Notice, the total credit claimed in Table 7[b] of TRAN-1 vide the impugned TRAN Invoices was Rs. 2,11,508/-. In the said Table 7[b], the assessee-noticee had declared that the impugned TRAN Invoices, both dated 28.06.2017, had been entered in the recipients' Books of Accounts on 31.07.2017 and the same was in contravention of Section 140[5] of the CGST Act, 2017, which emphasized on recording of the

invoices in the Books of Accounts within a period of thirty days from *the appointed day*. In view of such fact situation, it was observed that the impugned TRAN Credit amounting to Rs. 2,11,508/- [= Rs. 47,552/- + Rs. 1,63,956/-], availed vide the impugned TRAN Invoices, was inadmissible. It was observed that the assessee-noticee had wrongly availed credit of Central Tax to the extent of Rs. 2,11,508/- under Section 140[5] of the CGST Act, 2017 in its electronic credit ledger. It was further observed that the said amount was recoverable from the assessee-noticee along with appropriate interest and penalty in terms of the provisions of Section 73 of the CGST Act, 2017 read with Rule 121 of the CGST Rules, 2017.

6.1. With such observations, the petitioner [i.e. the assessee-noticee] was called upon to show cause, within a period of 7 [seven] days from receipt of the Show Cause Notice dated 26.09.2023, as to why –

[a] Central Tax amounting to Rs. 2,11,508/- only should not be demanded and recovered from the petitioner under Section 73[1] of the Central Goods and Services Tax [CGST] Act, 2017 read with Rule 121 of the CGST Rules, 2017;
[b] Applicable interest on the aforesaid amount of Central Tax should not be demanded and recovered from the petitioner under Section 73[1] read with Section 50[3] of the Central Goods and Services Tax [CGST] Act, 2017; and
[c] Penalty should not be imposed under Section 73[9] of the Central Goods and Services Tax [CGST] Act, 2017.

6.2. The petitioner [i.e. the assessee-noticee] responded to the Show Cause Notice by submitting its Reply on 26.10.2023. In the said Reply, the petitioner [assessee-noticee] had **inter alia** contended as under :-

[i] The goods covered by the two invoices, namely, Invoice no. 1741007321 dated 28.06.2017 and Invoice no. 1741007322 dated 28.06.2017 were reached in Assam on 30.07.2021 and AS GST Inward Permit no. 181930071702442 was generated on 30.07.2021. The entry in books was however passed on 31.07.2021 after verification of goods received internally. The GST permit was also verified by the State GST

authorities, namely Assistant Commissioner of Taxes, Unit B upon entry in the State of Assam.

[ii] The delay in receipt of goods dispatched by the supplier on 28.06.2017 was due to breakdown of vehicle in transit due to which transshipment of goods had to be done on the way. There was no fault of the recipient in this regard.

[iii] The detail of these invoices was duly furnished under the relevant Table in TRAN 1 and the said claim was duly accepted by the portal without any warning or error message being indicated. No option to apply for any extension for this delay [allowable upto 30 days] was made available on the portal while filing TRAN 1 either. There is no procedure prescribed for applying for extension suo moto by taxpayer. Hence it was understood bonafide to wait for the opportunity to be called upon for showing sufficient cause for allowing the extension for one day.

6.3. After receipt of the Reply dated 26.10.2023 from the petitioner [the assessee-noticee] to the Demand–cum–Show Cause Notice 26.09.2023, personal hearing was afforded to the petitioner's authorized representative by the Adjudicating Authority on 08.11.2023. Thereafter, the Adjudicating Authority by the impugned Order-in-Original has confirmed the demand of Rs. 2,11,508/- under Section 73[1] of the CGST Act on the ground that the petitioner had wrongly availed TRAN Credit to the extent of Rs. 2,11,508/- by the impugned TRAN Invoices. The Order-in-Original has further confirmed the demand and recovery of interest at applicable rate under Section 73[1] read with Section 50 of the CGST Act, 2017 apart from imposing penalty for an amount of Rs. 21,151/- under Section 73[9] of the CGST Act. Making assailment of the said Order-in-Original, the petitioner has preferred the instant writ petition.

7. I have heard Mr. D. Saraf, learned counsel for the petitioner; Mr. A.K. Dutta, learned Central Government Counsel [CGC] for the respondent no. 1; and Mr. S.C. Keyal, learned Standing Counsel, CGST for the respondent nos. 2 – 5.

8. Mr. Saraf, learned counsel for the petitioner by pointing to the discussion and finding recorded in Paragraph 7.0 of the Order-in-Original by the Adjudicating Authority, has

submitted that the Adjudicating Authority while passing the Order-in-Original has misconstrued in counting the period of thirty days in that while counting the period of thirty days, he has ignored the provisions contained in Section 9 of the General Clauses Act, 1897. He has further contended that the petitioner had complied with the provisions contained in sub-section [5] of Section 140 of the CGST Act, 2017 by making the entries within the prescribed time-limit of thirty days and as such, the issuance of the Show Cause Notice on 26.09.2023 was uncalled for, though a stand was earlier taken by the petitioner in the belief that there could be delay of one day in passing the entries. It is his submission that in the absence of any specific provision in the CGST Act, 2017 as regards calculation of time-period, the provisions of the General Clauses Act, 1897, a central legislation, would be applicable. It is the contention that Section 9 of the General Clauses Act, 1897 has provided for the manner how a period is to be counted. He has submitted that there is no dispute that *the appointed day* in the case in hand, is 01.07.2017 and in view of Section 9, *the appointed day*, that is, 01.07.2017 is to be excluded and the period of thirty days is to be counted accordingly. In support of his submissions, he has referred to the decisions of the Hon'ble Supreme Court of India in **Tarun Prasad Chatterjee vs. Dinanath Sharma**, reported in **[2000] 8 SCC 649**, and **Econ Antri Limited vs. Rom Industries Limited and another**, reported in **[2014] 11 SCC 769**.

9. **Au contraire**, Mr. Keyal, learned Standing Counsel, CGST has submitted that Section 107 of the CGST Act, 2017 has provided for a statutory remedy of appeal for the petitioner. But instead of approaching the appellate forum, the petitioner has chosen to invoke the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India. It is his submission that when a statutory remedy of appeal is available, a writ petition under Article 226 of the Constitution is not be entertained. With regard to the reasoning given by the Adjudicating Authority in the Order-in-Original, he has submitted that a taxing statute like the CGST Act, 2017 is to be construed strictly and in support of his such submissions, he has referred to the decisions of the Hon'ble Supreme Court of India in **Commissioner of Customs [Import], Mumbai vs. Dilip Kumar and Company and others**, reported in **[2018] 9 SCC 1**, and **State of Maharashtra vs. Shri Vile Parle Kelvani Mandal and others**, reported in **[2002] 2 SCC 725**.

10. In his submission in reply, Mr. Saraf has submitted that the writ petition is maintainable

against the Order-in-Original in the obtaining fact situation. He has referred to the decision of the Hon'ble Supreme Court of India in **M/s Godrej Sara Lee Limited vs. Excise and Taxation Officer-cum-Assessing Authority and others**, reported in **[2023] 3 SCR 871**, to contend that when a pure question of law is involved, a writ petition is maintainable despite availability of the statutory remedy of appeal.

11. I have given due consideration to the submissions of the learned counsel for the parties and have also gone through the materials available in the case records including the Show Cause Notice, the Reply submitted by the petitioner to the Show Cause Notice and the impugned Order-in-Original.

12. As the submissions of learned counsel for the parties are centered around the 'Discussion & Finding' of the Adjudicating Authority recorded in Paragraph 7.0 of the Order-in-Original, it is apposite to quote Paragraph 7.0 of the Order-in-Original in its entirety, for ready reference, :-

Discussion & Finding

7.0 Analyzing the legal aspect of the case, it is evident that the entire issue in the Show Cause Notice is in accordance with the provisions under Section 140[5] of CGST Act, 2017, based on the audit objection during the subject - Specified Compliance on TRAN-1 conducted by CAG, as communicated in their letter GSTA – III dated 29.07.2021 Notice filed TRAN-1 and availed Transitional Credit of Rs. 1,73,35,575/-. In Table 7[b] of TRAN, total credit claimed was Rs. 17,78,225/-. In the said Table, the tax payer had declared that the invoices [1741007321 & 1741007322 dated 28.06.2017] against Rs. 2,11,508/- had been entered in the recipients' books of accounts on 31.07.2017. This is in contravention of Section 140[5] of CGST Act, 2017, which emphasizes on recording of the invoices in the books of accounts a period of thirty days from the appointed day. The noticee did not accepted the mistake and claimed that the credit availed in Table 7[b] is that unveiled credit the delay in receipt of goods dispatched by the supplier on 28.08.2017 was due to breakdown of vehicle in transit due to which transshipment of goods had to be done on the way. There was no fault of the recipient in this regard.

13. As the discussion and finding recorded in Paragraph 7.0 is based on sub-section [5] of Section 140 of the CGST Act, 2017, the provisions contained in sub-section [5] of Section 140 of the CGST Act, 2017 are also quoted hereinbelow, for ready reference :-

> *140. Transitional arrangements for input tax credit. –*
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> * * * * * *
>
> *[5] A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, within such time and in such manner as may be prescribed, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day : Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days : Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.*
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> * * * * *

14. Sub-section [3] of Section 1 of the Central Goods and Services Tax Act, 2017 has prescribed that it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; provided that different dates may be appointed for different provisions of the Act and any reference in any such provision to the commencement of the Act shall be construed as a reference to the coming into force of that provision. As per sub-section [10] of Section 2 of the Central Goods and Services Tax [CGST] Act, 2017, '*appointed day*' means the date on which the provisions of the CGST Act, 2017 shall come into force. The Central Government vide a Notification no. 9/2017 – Central dated 28.06.2017 appointed 01.07.2017 as the date on which the provisions of Section 140 would come into force. Thus, it is not in dispute that *the appointed day* for the purpose of Section 140 is 01.07.2017. For compliance of the provisions of Section 140[5], a registered person like

the petitioner herein has to record the Invoices, etc. like the impugned TRAN Invoices involved herein in the Books of Accounts within thirty days from *the appointed day*, that is, 01.07.2017.

15. It is settled that in taxing statutes, as has been observed by the Hon'ble Supreme Court of India in **Commissioner of Customs [Import], Mumbai vs. Dilip Kumar and Company and others** [supra], it is the plain language of the provision that has to be preferred where the language is plain and is capable of one definite meaning. Where the words of the statute are clear and unambiguous, recourse cannot be had to principles of interpretation other than the literal view. The Constitution Bench in **Dilip Kumar Company** [supra] has observed that a taxing statute is to be strictly construed. The decisions of the Constitution Bench in **Dilip Kumar and Company** [supra] and **Shri Vile Parle Kelvani Mandal** [supra] are rendered in connection with exemption notifications.

16. As per sub-section [1] of Section 107 of the CGST Act, any person aggrieved by any decision or order passed under the CGST Act or the State Goods and Services Act or the Union Territory Goods and Services Act by an Adjudicating Authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person. The Order-in-Original has also reflected that any person deeming himself aggrieved by the Order-in-Original could appeal against the Order-in-Original to the Commissioner [Appeals], Customs, CGST & Central Excise [NER], Guwahati within three months from the date of communication of the Order-in-Original. To prefer an appeal against the Order-in-Original, payment of 10% of the tax demanded where tax or tax and penalty are in dispute or where penalty alone is in dispute, is to be deposited with the presentation of the appeal. It is relevant to note that the present writ petition has been filed within a period of three months from the date of passing of the impugned Order-in-Original.

17. The issues of *maintainability* and *entertainability* of a writ petition under Article 226 of the Constitution of India, despite alternative remedy provided by the relevant statutes, have come up for discussion in **M/s Godrej Sara Lee Limited** [supra]. It has been observed that

the power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution of India. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. It has been held that though the exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition, ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. The High Courts, depending on the fact situation involved in each particular case, have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Court should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition 'not maintainable'. It has been held that availability of an alternative remedy does not operate as an absolute bar to the *maintainability* of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by the statute, is a rule of policy, convenience and discretion rather than a rule of law. It has been observed that there is a fine but real distinction between the two distinct concepts, *entertainability* and *maintainability* of a writ petition and the same is not to be lost sight of. The objection as to *maintainability* goes to the root of the matter and if such objection is found to be of substance, the Court would be rendered incapable of even receiving the *lis* for adjudication. On the other hand, the question of *entertainability* is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. After making a survey of a number of decisions, it has been observed that when the writ petition raises a pure question of law and if investigation into facts is unnecessary, the High Court can entertain a writ petition in its discretion even though the alternative remedy is not availed of. It has been observed that where the controversy is a purely legal one and it does not involve disputed questions of fact, but only questions of law, then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy being available.

18. It is also settled proposition of law that the High Court in its extra-ordinary and discretionary writ jurisdiction under Article 226 can examine the decision of a subordinate tribunals, bodies or officers to see whether it has acted wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuses to exercise a jurisdiction vested in them, or there is a manifest error in the face of the record.

19. Reverting back to the facts of the case in hand, it is within a period of thirty days from *the appointed day*, that is, 01.07.2017, an assessee like the petitioner has to comply with the provisions contained in sub-section [5] of Section 140 of the CGST Act, 2017. No provision in the CGST Act, 2017 regarding calculation of period of time has been brought to the notice of the Court by the learned counsel for the parties. The Constitution Bench, in **Dilip Kumar and Company** [supra], has observed that an Act of Parliament/Legislature cannot foresee all types of situations and all types of consequences. It is for the Court to see whether a particular case falls within the broad principles of law enacted by the Legislature. It has been observed that there are many occasions where the language used and the phrases employed in the statute are not perfect. In all the Acts and Regulations, made either by the Parliament or the Legislature, the words and phrases as defined in the General Clauses Act and the principles of interpretation laid down in the General Clauses Act are to be necessarily kept in view. If while interpreting a statutory law, any doubt arises as to the meaning to be assigned to a word or a phrase or a clause used in an enactment and such word, phrase or clause is not specifically defined, it is legitimate and indeed mandatory to fall back on the General Clauses Act. When there is repugnancy or conflict as to the subject or context between the General Clauses Act and a statutory provision which falls for interpretation, the Court must necessary refer to the provisions of the statute. This Court is of the considered view that in the absence of any specific provision in the CGST Act, 2017 regarding calculation of time, the provisions of Section 9 of the General Clauses Act, 1897 is clearly applicable in the case in hand.

20. The provisions of the General Clauses Act, 1897, more particularly, the provisions of Section 9 thereof have contained the manner for calculation of time. Section 9 of the General Clauses Act has provided for commencement and termination of time. For ready reference,

Section 9 is quoted hereinbelow :-

> *9. Commencement and termination of time.—*
> *[1] In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.*
> *[2] This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.*

21. From a reading of Section 9, quoted above, it is noticeable that in respect of any Central Act or Regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and for the purpose of including the last in a series of days or any other period of time, to use the word 'to'. The provisions of Section 9 of the General Clauses Act have come to be considered in a number of decisions of Hon'ble Supreme Court of India. From plain and simple language of Section 9, it is discernible that if particular time-period is given from a certain date within which an act is to be done, the day on that date is to be excluded and meaning thereby, the period is to be calculated by excluding the day from which the period is to be reckoned. The provisions of sub-section [2] of Section 9 of the General Clauses Act has made it evidently clear that Section 9 applies to all Central Acts made after the third day of January, 1868, meaning thereby, Section 9 is applicable to the CGST Act, 2017.

22. In **Tarun Prasad Chatterjee vs. Dinanath Sharma**, reported in **[2000] 8 SCC 649**, the Hon'ble Supreme Court for the purpose of interpreting the provisions of Section 9 of the General Clauses Act, has quoted the following from **Halsbury's laws of England**, 37th Edition, Volume 3, Page 92 : -

> *Days included or excluded –*
> *When a period of time running from a given day or even to another day or event is*

prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as 'from such a day' or 'until such a day' are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day.

22.1. As regards Section 9 of the General Clauses Act, 1897, the decision in **Tarun Prasad Chatterjee vs. Dinanath Sharma** [supra] has observed as under :

12. Section 9 says that in any Central Act or Regulation made after the commencement of of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation.

13. It was argued that the language used in Section 81[1] that 'within forty-five days from, but not earlier than the date of election of the returned candidate' expresses a different intention and Section 9 of the General Clauses Act has no

application. We do not find any force in this contention. In order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed 'from' a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 require to exclude the first day. The words 'from' and 'within' used in Section 81[1] of the RP Act, 1951 do not express any contrary intention.

23. As per Clause [b] of Section 142 of the Negotiable Instruments [NI] Act, 1881, as amended, a complaint for the offence under Section 138 of the Act is to be made 'within' one month from the date on which the cause of action arises under clause [c] of the proviso to Section 138. The said provision has come for consideration before a 3-Judges Bench of the Hon'ble Supreme Court of India in **Econ Antri Limited vs. Rom Indsustries Limited and another**, reported in **[2014] 11 SCC 769**. Approving the decision in **Tarun Prasad Chatterjee vs. Dinanath Sharma** [supra] and interpreting Section 9, it has been held that while calculating the period of one month, which is provided under Section 142[b] of the Negotiable Instruments [NI] Act, 1881, the period has to be reckoned by excluding the date on which the cause of action arises. In the proviso [c] to Section 138 of the NI Act, it has been stipulated that if the drawer of the dishonoured cheque fails to make payment of the amount of the dishonoured cheque to the payee or, as the case may be, to the holder in the due course of the cheque 'within' fifteen days of the receipt 'of' the demand notice, the cause of action to file the complaint under Section 142[b] of the NI Act arises 'within' one month 'of' the date on which the cause of action arises. In **Econ Antri Limited vs. Rom Industries Limited and another** [supra], it has been held that it is not possible to hold that the word 'of' occurring in the proviso [c] of Section 138 and Section 142[b] of the Negotiable Instruments [NI] Act is to be interpreted differently as against the word 'from' occurring in Section 138[a] of the said Act; and that for the purposes of Section 142[b], which prescribes to the effect that the complaint is to be filed 'within' thirty days 'of' the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of thirty days. It has been further held that the words 'of', 'from' and 'after' may, in a given case, mean really the same thing. Quoting from *Stroud's Judicial Dictionary*, it has been observed that the word 'of' is sometimes equivalent of 'after'.

24. The above two decisions have clearly settled the position regards the manner of calculation of time vis-à-vis Section 9 of the General Clauses Act, 1897. As the issue which has fallen for consideration in the fact situation obtaining the case in hand is limited to the point as to whether the petitioner-assessee had submitted the impugned TRAN Invoices *within a period of thirty days from the appointed day*, with no other factual disputes involved, the issue involved is clearly on a point of law. The Court in a such case can examine such issue in a writ petition preferred under Article 226 of the Constitution of India. The issue is with regard to the period of thirty days under sub-section [5] of Section 140 of the CGST Act which is to be counted *from the appointed day* with *the appointed day* and being 01.07.2017, whether the day, 01.07.2017 is required to be excluded for the purpose of calculating thirty days.

25. From the above discussion regarding commencement and termination of time in the context of Section 9 of the General Causes Act, 1897, it is evidently clear for the expression, '*within a period of thirty days from the appointed day*', occurring in sub-section [5] of Section 140 of the CGST Act, 2017, the period has to be reckoned by excluding *the appointed day*, which is 01.07.2017. If after exclusion of *the appointed day* [01.07.2017], the period of thirty days is counted then the thirtieth day falls on 31.07.2017. Thus, this Court is of the unhesitant view that the impugned TRAN Invoices, which were entered in the recipients' Books of Accounts on 31.07.2017 were *within the period of thirty days from the appointed day* [01.07.2017], as required in sub-section [5] of Section 140 of the CGST Act. Consequently, the findings recorded in Paragraph 7.0 of the Order-in-Original dated 23.11.2023 by the Adjudicating Authority is not sustainable in law. Accordingly, the impugned Order-in-Original dated 23.11.2023 set aside and quashed. The writ petition accordingly, stands allowed to the extent indicated above. There shall, however, be no order as to costs.

JUDGE

Comparing Assistant