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Judgment No.: 191
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Judgment Deals With

It is the choice of petitioner to either file appeal u/s 107 or revision u/s 108 against orders passed u/s 73.

The words in Section 108(2)(1) cannot be understood as implying that first of all the applicant should file an appeal and only thereafter, a revision will lie against such an order passed in appeal.

Section/Rule	Section 108
Authority	Allahabad High Court
Case Name	Buddha Resorts Private Limited VS Chief Commissioner Of GST LKO. Zone
Dated	22 nd January, 2025
Citation	WRIT TAX No. - 381 of 2024

Brief facts of the case:

The petitioner has challenged revisional order passed by the Revisional Authority under Section 108 of U.P. GST Act, 2017.

Contention of the Petitioner:

The revision of the petitioner has been dismissed firstly on merits and then as not maintainable.

The revision was maintainable in view of the language used in Section 108 of the Act, 2017. Section 108(2)(1), says that Revisional Authority shall not exercise any power if—

- the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or
- the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

- c) the order has already been taken for revision under this section at an earlier stage; or
- d) the order has been passed in exercise of the powers under sub-section (1).

Though remedy of appeal was available to the petitioner against an order passed under Section 73 of the Act, 2017 but a revision was also maintainable under Section 108 and the petitioner chose to file a revision. If the order impugned is taken as an order on merits, then, it is a cryptic order which has been passed without due and proper application of mind to the facts and grounds raised in the revision.

If it is treated as an order dismissing the revision as not maintainable, then, the same is clearly against the provisions contained in Section 108 of the Act, 2017.

Findings and Decision of the Court:

If the revision was not maintainable on the ground that there was a provision of appeal, then, the Revisional Authority should not have discussed any other aspect of the matter, however, if he entered into merits of the matter in the sense as to whether the parameters and prerequisites for exercise of revisional powers under Section 108 were existing or not, then, he could not have observed that the revision is not maintainable. The order is not clear.

It is no way that the words in Section 108(2)(1) can be understood as implying that first of all the applicant, who has filed the revision under Section 108, should file an appeal and only thereafter, a revision will lie against such an order passed in appeal.

Thus, the impugned order in either eventuality is not maintainable. If it is taken as a decision on merits it does not consider the facts of the case and the pleas raised in the revision. If it is taken as an order dismissing the revision as not maintainable, then, it is against the provisions of Section 108.

Therefore, the impugned order was quashed and the revision stood restored to its original number before the Revisional Authority for a consideration afresh in accordance with law.

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