

[2024] 160 taxmann.com 556 (Andhra Pradesh)/[2024] 103 GST 400 (Andhra Pradesh)/[2024] 84 GSTL 484 (Andhra Pradesh)[21-02-2024]

GST : Where cause of delay in not preferring appeal within statutory period was due to assessee's ill health, difficulty in walking and treatment under doctor's supervision and in support, doctor's certificate was also filed, there was sufficient cause for condoning delay in filing appeal

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[2024] 160 taxmann.com 556 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Mastek Engineering (P.) Ltd.

v.

Appellate Authority and Additional Commissioner, State Tax,*

RAVI NATH TILHARI AND HARINATH N., JJ.

WRIT PETITION NO. 4517 OF 2024

FEBRUARY 21, 2024

Registration - Cancellation of - Appeals to appellate authority - Delay in filing appeal - Petitioner-assessee's registration was cancelled by order dated 13-6-2023 - Assessee filed an appeal under section 107 on 21-12-2023, and same was rejected on being barred by limitation - HELD : Appellate authority had no power to condone delay beyond condonable statutory period - It was stated that cause of delay in not preferring appeal within statutory period was due to assessee's ill health, difficulty in walking and treatment under doctor's supervision - In support, doctor's certificate was also filed - Though impugned order did not suffer from any illegality, but considering that there was sufficient cause for not filing appeal in time, in interest of justice, delay was to be condoned by imposing cost of Rs. 20 thousand, and Appellate Authority was to be directed to consider and decide appeal on merits [Section [29](#), read with section [107](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 11] [Partly in favour of assessee]

Shaik Jeelani Basha, *for the Petitioner.*

ORDER

1. Heard Shaik Jeelani Basha, learned counsel for the petitioner and learned Government Pleader for Commercial Tax for the respondents and perused the material on record.
2. With the consent of learned counsels for the parties, the present writ petition is being decided finally at this stage.
3. The petitioner's GST registration was cancelled by order dated 13.06.2023 after show cause notice dated 09.01.2023. The petitioner filed appeal under Section 107 of Andhra Pradesh Goods and Services Tax Act, 2017 (for short 'APGST Act') on 21.12.2023 which has been rejected vide order dated 12.02.2024 impugned in this petition, at the admission stage on the ground that it was barred by limitation and beyond the condonable statutory period.
4. The appeal was beyond the condonable period by 73 days as per the impugned appellate order. Learned counsel for the petitioner disputing the same submits that the delay after excluding condonable period by the Appellate Authority is 69 days.

5. Section 107 of APGST Act provides for the appeal to be filed within a period of limitation of three months from the date on which the decision or order appealed against is communicated to the appellant. As per sub-section (4) of Section 107, the Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the said period of limitation, allow it to be presented within a further period of one month. The appellate authority under the statutory provision has no power to condone the delay beyond the condonable statutory period. Consequently, the petitioner's appeal was rejected.

6. The cause of the delay in not preferring the appeal within the statutory period of limitation as also the condonable period so stated was that the petitioner's ill health, difficulty in walking and being under the Doctor's Supervision. In support thereof Doctor's Certificate was filed as also the petitioner's affidavit.

7. The learned counsel for the petitioner has placed reliance in the case of W.P.No.17349 of 2023 decided on 04.08.2023, in which a Coordinate Bench of this Court, after finding that the sufficient cause was shown to condone the delay in filing the appeal, remitted the matter to the appellate authority, by imposing cost of Rs.20,000/-.

8. The Appellate Authority in the impugned order did not dispute the cause of delay nor found that such cause was not sufficient. There was proof filed in support of the cause for not preferring the appeal in time. The rejection is only because beyond condonable period, the delay could not be condoned by the Appellate Authority.

9. Learned Government Pleader also does not dispute that in view of the material before the Appellate Authority, the cause shown was considered as sufficient by Appellate Authority.

10. The cause as shown is found sufficient to condone the delay in filing appeal before the Appellate Authority.

11. The impugned order in view of Section 107 of APGST Act does not suffer from any illegality, as the appellate authority cannot condone the delay beyond statutory condonable period but considering that there was sufficient cause for not preferring appeal in time, the interest of justice requires condonation of the delay and adjudication of the matter on merit by Appellate Authority. The appeal is a valuable statutory right. In exercise of the writ jurisdiction to do complete justice and provide opportunity of hearing on merits of the appeal, we condone the delay by imposing costs of Rs.20,000/-. The appellate authority shall consider and decide the appeal on merits in accordance with law, expeditiously. The Costs shall be deposited in two (02) weeks from the date of receipt of copy of this order, before the appellate authority.

12. The Writ Petition is partly allowed in the aforesaid terms.

13. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand dismissed.

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*Partly in favour of assessee.