
[2023] 155 taxmann.com 89 (Andhra Pradesh)[14-06-2023]

GST : Appellate Tribunal having not yet been constituted under provisions of APGST Act, 2017, delay in filing appeal was to be condoned and matter was to be remanded

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[2023] 155 taxmann.com 89 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

J.V.K. Industries

v.

Union of India*

U. DURGA PRASAD RAO AND V. GOPALA KRISHNA RAO, JJ.

WRIT PETITION NO.12853 OF 2023

JUNE 14, 2023

Appeal to Appellate Authority - Limitation - Condonation of delay - Appeal having been filed with delay of 120 days was rejected by Appellate Authority - Appellate Tribunal having not yet been constituted under provisions of APGST Act, 2017, delay in filing appeal was to be condoned and matter was to be remanded for reconsideration on condition of petitioner depositing 10 per cent of disputed tax over and above amount said to have been deposited by petitioner [Sections [107](#) and [112](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Article [226](#) of Constitution of India][Paras 5 and 6] [In favour of assessee]

Ms. Jyothi Ratna Anumolu, Ld. Dy. Solicitor General for the Respondent.

ORDER

U. Durga Prasad Rao, J. - The challenge in this writ petition is to the Order/Endorsement *vide* A.O.No.DIN3718042358644 in Special Appeal No. GST/VZM/484/2022-23, dated 18-4-2023 passed by the 2nd respondent rejecting the appeal filed by the petitioner against the Refund Order passed by the 3rd respondent levying tax of Rs. 43,74,241/- for the tax period from April 2018 to March 2019.

2. Heard learned counsel for petitioner Ms. Jyothi Ratna Anumolu, learned Deputy Solicitor General for respondent No. 1 and learned Government Pleader for Commercial Tax-II for respondent No. 2 & 3.

3. Learned counsel for petitioner would submit that the 3rd respondent has wrongly assessed the petitioner's tax period 2018-19 for an amount of Rs. 46,62,622/- by disallowing the due ITC and challenging the same the petitioner filed the appeal, but the same was rejected on a technical ground that the appeal was filed beyond the condonable period. The learned counsel further submits that since the Appellate Tribunal has not been constituted U/s 112 of APGST Act, 2017 to carry the matter to the Appellate Tribunal, the writ petition is filed and unless the delay is condoned and the petitioner is given an opportunity to pursue the appeal, petitioner will be put to much hardship.

4. Learned Government Pleader while opposing the writ petition would submit that, in case the Court inclined to allow the writ petition, suitable terms may be imposed.

5. As can be seen from the impugned order dated 18-4-2023, the 2nd respondent has rejected the appeal on the ground that the appeal was filed with an uncondonable delay period of 120 days.

6. Having regard to the submission of learned counsel for petitioner and on a conspectus of the facts involved in the matter and also having regard to the fact that similar matter in W.P.No.9608 of 2023, was allowed by

this Court and in view of the fact that the Appellate Tribunal has not yet been constituted under the provisions of APGST Act, 2017, we allow the writ petition and condone the total delay in filing the appeal and remit the matter back to the 2nd respondent for considering the appeal and pass an appropriate order after hearing both parties on the condition of petitioner depositing 10% of the disputed tax over and above the amount said to have been deposited by the petitioner within three (3) weeks from the date of receipt of copy of this order.

Accordingly, this Writ Petition is allowed. No costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

POONAM

*In favour of assessee.