

**[2023] 148 taxmann.com 53 (Andhra Pradesh)/[2023] 97 GST 200 (Andhra Pradesh)[09-12-2022]**

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**GST : Where appeal against cancellation of GST registration filed before First Appellate Authority after condonable period was dismissed being time barred, in view of fact that GST Tribunal was not constituted so as to enable petitioner-assessee to pursue their further legal remedies, matter was to be remitted back to primary authority to consider request for restoration of GST registration**

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**[2023] 148 taxmann.com 53 (Andhra Pradesh)**

**HIGH COURT OF ANDHRA PRADESH**

**Simhadri Shipping and Logistics (P.) Ltd.**

**v.**

**Goods and Service Tax Officer\***

**SRI. U.DURGA PRASAD RAO AND SRI. DUPPALA VENKATA RAMANA, JJ.**

**WRIT PETITION NO. 39904 OF 2022**

**DECEMBER 9, 2022**

**Registration - Cancellation of registration - Appeal to Appellate Authority - Limitation period - Assesses sought for condonation of delay of more than four months i.e. beyond condonable period of one month in filing appeal before FAA against cancellation of GST registration for non-filing of GST returns - Since appeal was rejected by FAA as having been filed beyond condonable period of one month and GST Tribunal was also not constituted under section 109 of Central Goods and Services Tax Act, 2017 so as to enable petitioner-assessee to pursue their further legal remedies, matter was to be remitted back to concerned primary authority to consider their request for restoration of GST registration and pass appropriate order after affording them opportunity of personal hearing [Section [29](#), read with section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule [108](#) of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 2, 5 to 7] [In favour of assessee]**

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#### **CASE REVIEW**

*Chenna Krishnama Charyulu Karampudi v. Additional Commissioner Appeals* [\[2022\] 142 taxmann.com 70/94 GST 376 \(Telangana\)](#) (para 5) followed.

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#### **CASES REFERRED TO**

*Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner Appeals* [\[2022\] 142 taxmann.com 70/94 GST 376 \(Telangana\)](#) (para 3).

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#### **ORDER**

**Sri. U. Durga Prasad Rao, J.** - The petitioner seeks writ of mandamus to declare the action of the 1st respondent in cancelling the petitioner's GST registration by order dated 11-4-2022 and the order of 2nd respondent dated 29.11.2022, contrary to the provisions of section 29(2) of the Andhra Pradesh Goods and Service Tax Act, 2017, as illegal, arbitrary, without jurisdiction and pass such other order.

2. The petitioner's case is thus:

- (a) *Vide* reference No.ZA370322026688E, dated 19-3-2022, the 1st respondent cancelled the GST Registration of the petitioner w.e.f., 19-3-2022 for the reason of failure on the part of the petitioner to file returns for a period of six months prior to issuance of the show-cause notice dated 19-3-2022.
- (b) Aggrieved thereby, the petitioner filed appeal before the 2nd respondent and vide order No.ZD371122018026X, dated 29-11-2022, the appeal was dismissed on the sole ground that the appeal was filed with a delay of 134 days and as per Section 107 of the GST Act, the delay could be condoned for a period of one month and since the appeal was exceeding the limitation, the appellate authority is not vested with the powers to condone the said delay beyond 30 days. Accordingly, the appeal was rejected for admission.

Hence, the present writ petition.

3. Learned counsel for petitioner, Sri Srinivasa Rao Kudupudi, would mainly urge that the petitioner has a good ground to seek for restoration of his registration and in fact, he has mentioned the reasons for non-filing of the returns and on a technical ground that appeal was filed beyond the condonable period, the appeal was rejected and since the GST Tribunal has not been constituted under Section 109 of the CGST Act, the petitioner has no other go except invoking the jurisdiction of this Court under Article 226 of the Constitution. He would thus pray to allow the writ petition and remit the matter back to the primary authority to consider the petitioner's case and pass appropriate orders. He would rely upon the order of the Division Bench of the High Court for the State of Telangana in *Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner Appeals* [2022] 142 taxmann.com 70/94 GST 376 (Telangana), where under in similar circumstances, the writ petition was allowed and the matter was remitted to the primary authority for reconsideration of petitioner's case.

4. Learned Government Pleader for Commercial Taxes – II opposed the writ petition stating that the petitioner has not filed the appeal within the time and instead filed the appeal beyond the condonable period and therefore, the 2nd respondent has rightly rejected the appeal. Therefore, order of the appellate authority suffer no legal flaw and the writ petition is not maintainable.

5. We perused the record and also the decision in *Chenna Krishnama (supra)*. In similar circumstances, learned Division Bench of the High Court for the State of Telangana having considered the fact that GST Tribunal has not been constituted under section 109 of the CGST Act and thereby, the petitioner could not be left without any remedy, held that it would be just and proper if the entire matter was remitted back to the 2nd respondent therein to reconsider the case of the petitioner and pass appropriate order in accordance with law.

6. Needless to emphasize that the above said decision applies with all its fours to the case on hand. The petitioner preferred appeal but it was rejected for the reasons discussed supra. In that view of the matter and as the GST Tribunal has not been constituted as per the provisions of the Act so as to enable the petitioner to pursue his further legal remedies, in the interest of justice, we consider it apposite to allow the writ petition and remit the matter back to the primary authority i.e., 1st respondent to re-consider the case of the petitioner and after affording a personal hearing to him, pass an appropriate order in accordance with law expeditiously but not later than two weeks from the date of receipt of copy of this order.

7. With the above observation, this writ petition is allowed. No costs. As a sequel, interlocutory applications pending, if any, shall stand closed.

TIWARI