

**[2024] 160 taxmann.com 697 (Andhra Pradesh)/[2024] 85 GSTL 38 (Andhra Pradesh)[25-01-2024]**

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**GST : Where assessee was bedridden during relevant period, as he fell in bathroom and sustained back injury but without considering this factor assessee's appeal was rejected by appellate authority on sole ground that appeal was filed 56 days beyond condonable period, following decisions in Narayanpet Municipality v. Superintendent of Central Tax [\[2023\] 150 taxmann.com 303/98 GST 289/2023 \(74\) G.S.T.L. 296 \(Telangana\)](#) and Writ Petition Nos. 17349 of 2023 and 42201 of 2022 of Andhra Pradesh High Court, instant petition was to be allowed by condoning entire delay in filing appeal**

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**[2024] 160 taxmann.com 697 (Andhra Pradesh)**

**HIGH COURT OF ANDHRA PRADESH**

**Gaddipati Venkateswara Rao**

**v.**

**Additional Commissioner (ST)(Appeals)\***

**U.DURGA PRASAD RAO AND SMT. KIRANMAYEE MANDAVA, JJ.**

**WRIT PETITION NO. 1248 OF 2024**

**JANUARY 25, 2024**

**Appellate authority - Appeals to - Limitation period - Condonation of delay Period 5-8-2023 to 30-9-2023 - Assessee's appeal against assessment order, was rejected by Appellate Authority by impugned order on sole ground that appeal was filed 56 days beyond condonable period - Assessee had submitted that he was bedridden during relevant period, as he fell in bathroom and sustained back injury and this factor was not considered by Appellate Authority on ground that said authority could not condone delay beyond condonable period - HELD : Since Appellate Tribunal had not been yet constituted in terms of section 112 of APGST Act, instant petition was to be entertained - Further, in view of decisions in Narayanpet Municipality v. Superintendent of Central Tax [\[2023\] 150 taxmann.com 303/98 GST 289/2023 \(74\) G.S.T.L. 296 \(Telangana\)](#) and Writ Petition Nos. 17349 of 2023 and 42201 of 2022 of Andhra Pradesh High Court, instant petition was to be allowed by condoning entire delay in filing appeal, on conditions [Section [107](#), read with section [112](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 6 to 8] [In favour of assessee]**

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#### **CASE REVIEW**

*Narayanpet Municipality v. Superintendent of Central Tax [\[2023\] 150 taxmann.com 303/98 GST 289/2023 \(74\) G.S.T.L. 296 \(Telangana\)](#) (para 8) and Writ Petition Nos. 17349 of 2023 and 42201 of 2022 (Andhra Pradesh) (para 8) followed.*

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#### **CASES REFERRED TO**

*Narayanpet Municipality v. Superintendent of Central Tax [\[2023\] 150 taxmann.com 303/98 GST 289/2023 \(74\) G.S.T.L. 296 \(Telangana\)](#) (para 7).*

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#### **ORDER**

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**U. Durga Prasad Rao, J.** - The Court made the following Order: (Per Hon'ble Sri Justice U. Durga Prasad Rao) The petitioner, challenging the Assessment Order No. AD370323031615 dated 27-5-2023 passed by the 2nd respondent, filed an appeal before the Additional Commissioner/1st respondent and the said authority by the impugned order dated 16-12-2023 has rejected the appeal on the sole ground that the appeal filed by the appellant is beyond the condonable period *i.e.*, 56 days. Challenging the said order, the instant writ petition is filed.

2. Heard learned counsel for the petitioner and learned Government Pleader for Commercial Tax-II.

3. Learned counsel for the petitioner would submit that since the GST Appellate Tribunal has not been constituted, the writ petition may be entertained. Additionally, while admitting that there is a delay of 56 days beyond the condonable period, learned counsel for the petitioner submitted that the petitioner was bedridden during the relevant period *i.e.*, from 5-8-2023 to 30-9-2023, as he fell in the bathroom and sustained back injury. The said delay of 56 days was not wanton but because of his ill-health and this factor was not considered by the 1st respondent/1st Appellate Authority on the ground that the said authority cannot condone the delay beyond the condonable period. He thus requested to consider the said fact and condone the delay and remit the matter back to the 1st respondent to admit the appeal and hear the petitioner. Learned counsel relied upon the decisions of the High Court of Telangana reported in *Narayanpet Municipality v. Superintendent of Central Tax* 2023 (74) G.S.T.L.296 (Telangana) and of this Court in W.P.Nos.17349 of 2023 & 42201 of 2022 to buttress his arguments.

4. Learned Government Pleader for Commercial Tax-II. opposed the writ petition stating that, because there was a delay of 56 days beyond the condonable period, 1st respondent was right in rejecting the appeal and as such the present writ petition is not sustainable.

5. We have considered the above respective submissions and perused the material available on record.

6. As submitted by the petitioner, the 1st respondent has rejected the appeal on the sole ground that the appeal was filed with a delay of 56 days which was beyond the condonable period. Except that no other merits in the case of the petitioner were discussed. Be that it may, admittedly the GST appellate tribunal has not been constituted in terms of Sec.112 of APGST Act 2017 to carry out the matter to the said Tribunal. Therefore, this writ petition can be entertained by this Court.

7. In *Narayanpet Municipality v. Superintendent of Central Tax* [\[2013\] 150 taxmann.com 303/98 GST 289/2023 \(74\) G.S.T.L.296 \(Telangana\)](#) when GST Registration was cancelled and the same was challenged, the appeal was dismissed by the appellate authority on the sole ground that the appeal was filed beyond the condonable period. In that context, the Division Bench of High Court of Telangana has observed thus:

"(8) we further find that the issue pertains to cancellation of GST registration of the petitioner. In the facts and circumstances of the case, it would be just and proper if the entire matter is remanded back to respondent No. 1 to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

(9) In the light of the above and without expressing any opinion on merit, we remand the matter back to the file of the respondent No. 1 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in accordance with law. Needless to say, when the respondent No. 1 hears the matter on remand, petitioner would be at liberty to submit the returns as per the statute.

(10) Writ petition is accordingly disposed of."

8. The above decision applies to the case of the petitioner as in the instant case also the sole ground on which the appeal was rejected was because the same was filed beyond the condonable period. Learned Government Pleader no doubt argued that the facts in the case are slightly different because the Division Bench of Telangana High Court also considered the fact that the GST Registration of the petitioner therein was cancelled *suomotu* on the ground of non filing of returns and allowed the writ petition and remitted the matter back to the concerned appellate authority. However, in the present case the main issue was that the appeal was rejected on the point that the same was filed beyond the condonable period. In our view both the cases deal with same aspect *i.e.*, condoning the delay that was occurred beyond condonable period. In that case the impugned Order challenged in Appeal was the cancellation of Registration. Whereas, in the case on hand, the impugned order under challenge in Appeal is the Assessment Order. However, the principle in the cited decision being the condonation of delay beyond the condonable period, the same can be made applicable to

case on hand also. Similarly, in Writ Petition Nos.17349 of 2023 and 42201 of 2022 a Division Bench of this High Court where one of us is a member, has considered similar issue and condoned delay on terms and remitted the matter back to the 1st appellate authority. In view of the above judgments, we consider it apposite to allow the writ petition, however, on imposing suitable terms.

Accordingly this writ petition is allowed by condoning the entire delay in filing the appeal before the appellate authority on the condition of the petitioner depositing costs of Rs. 20,000/- before the appellate authority within a period of one week from the date of receipt of copy of this Order. On such payment of costs, the appellate authority/1st respondent shall restore the appeal and admit the same and pass necessary orders on merits after hearing both parties. There shall be no order as to costs.

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

AJAY

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\*In favour of assessee.