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[2024] 163 taxmann.com 282 (Andhra Pradesh)[04-04-2024]

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**GST : Limitation period for order under Section 73(9) of CGST Act 2017 to be determined based on 'due date' rather than 'actual date' of filing returns**

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[2024] 163 taxmann.com 282 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Fluentgrid Ltd.**

**v.**

**Additional Commissioner of Central Tax, Visakhapatnam\***

**RAVI NATH TILHARI AND SMT. KIRANMAYEE MANDAVA, JJ.**

**WRIT PETITION NO. 8291 OF 2024**

**APRIL 4, 2024**

**Demands - Tax or ITC not involving fraud, etc. - Show cause notice, defects in - Financial Year 2017-18 - Assessee challenged order passed under Section 73(9) of CGST Act 2017 along with show cause notice under Section 73(1) on grounds that they were issued beyond 3-year limitation period - Revenue contended limitation to be considered from actual date of filing annual returns - HELD: Prima facie force in assessee's contention that 'due date' and not 'actual date' of filing returns is relevant for limitation - Coercive action pursuant to impugned order stayed till next hearing - Matter to be listed for further consideration [Section 73 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 3, 9 and 10] [In favour of assessee]**

**Circulars and Notifications: Notification No. 09/2023-C.T. dated 31.03.2023 and GO Ms. No. 121 dated 25.08.2023**

#### **CASES REFERRED TO**

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*Rkec Projects Ltd. v. Dy. Asstt. Commissioner (ST)* [w.p. no. 6084 of 2024, dated 11-3-2024] (para 3).

**Sri Venkata Prasad P**, Ld. Counsel for the Petitioner. **Ms. Santhi Chandra**, Ld. Jr. Standing Counsel and **Sri Y.V. Anil Kumar**, Ld. Counsel for the Respondent.

#### **ORDER**

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1. Heard Sri Venkata Prasad P, learned counsel for the petitioner and Ms.Santhi Chandra, learned Junior Standing Counsel for respondent Nos.1 to 3 & 6.

2. Sri Y.V.Anil Kumar, learned counsel has accepted notice for Respondent No.4.

3. Sri Venkata Prasad. P, learned counsel for the petitioner submits that the controversy involved in this petition is also attracting attention of this Court in various writ petitions, one of which *Rkec Projects Ltd. v. Dy. Asstt. Commissioner (ST)* [W.P. No. 6084 of 2024, dated 11-3-2024] for the same financial year 2017-18. He submit that same order may be passed in the present case also.

4. The following order was passed in W.P.No.6084 of 2024:-

"Heard Sri Karthik Ramana Puttamreddy, learned counsel for the petitioner and Sri Shekhar, learned Government Pleader for Commercial Tax for the respondents.

2. The petitioner is challenging the impugned order dated 27.12.2023 passed under Section 73(9) of the C.G.S.T. Act 2017, along with the show cause notice dated 28.09.2023 under Section 73(1). The challenge is on the ground that the period of limitation of three (03) years with effect from 07.02.2020 for the assessment year 2017-18, i.e. the extended period *vide* notification dated 03.02.2020 also expired on 07.02.2023. The impugned show cause notice and the impugned order passed under Section 73 are beyond the period of limitation which cannot be sustained being without jurisdiction. He submits that though the notification dated 31.03.2023 has been issued under Section 168A of the Act, but that would also not cover/save the present case, for limitation, as the notification itself is beyond the powers of Section 168A. The notification dated 31.03.2023 is also under challenge in the present petition. His submission is that such notification could be issued under Section 168A, only when the actions could not be completed under the Act, by 'Force Majeure', but any such Force Majeure is not mentioned in the notification which necessitated or empowered for its issuance.

3. He further submits that the High Court of Gujarat in the case of M/s. SRSS Agro Private Limited v. Union of India Special Civil Application No. 19720 of 2023, dated 10.11.2023, High Court of Allahabad in the case of M/s. Graxiano Trasmissioni v. Goods and Services Tax and others Writ Tax No. 1256 of 2023, dated 17.11.2023 and High Court for the State of Telangana in the case of M/s. Perfetti Van Melle India Private Limited v. Union of India and others Writ Petition No.2123 of 2024, dated 13.01.2024, under the similar circumstances, have entertained the writ petitions and the impugned show cause notices or the orders, as the case may be in those cases, have been stayed.

4. Learned Government Pleader submits that the limitation of three (03) years is to be considered from the date of actual filing of annual returns. He also prays for time to file counter affidavit.

5. The matter requires consideration.

6. Let the counter affidavit be filed within a period of four (04) weeks.

7. If counter affidavit is filed, the reply/rejoinder affidavit, if any, may be filed within a further period of two (02) weeks.

8. List on 22.04.2024.

9. *Prima facie*, in view of the statutory provisions and the plain language, there appears to be force in the submissions of the learned counsel for the petitioner that it is the 'due date' and not the 'actual date' of filing of returns which is relevant for the limitation purposes.

10. Till the next date of listing, no coercive action would be taken pursuant to the impugned order."

5. Ms. Santhi Chandra, learned Junior Standing Counsel submits that the order is appealable under the statute and for the filing the appeal, the petitioner would be required to deposit the amount of 10% of the disputed amount. She further submits that in view thereof, the petitioner may be directed to make the payment of the amount out of the disputed amount under the impugned order.

6. We are of the view that as the ground of challenge is that initiation of the proceedings is beyond the period of limitation as also extended period as the show cause notice was not issued in consonance in the provisions of Section 73(2) and as such the order is within the jurisdiction and no tax would be levied. No cause is made out at this stage for direction to the petitioner to make any deposit.

7. Let the counter affidavit be filed.

8. If counter affidavit is filed, the reply/rejoinder affidavit, if any, may be filed.

9. List on 22.04.2024.

10. *Prima facie*, in view of the statutory provisions and the plain language, there appears to be force in the submissions of the learned counsel for the petitioner that it is the 'due date' and not the 'actual date' of filing of returns which is relevant for the limitation purposes.

11. Till the next date of listing, no coercive action would be taken pursuant to the impugned order."

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\*In favour of assessee.