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[2020] 115 taxmann.com 429 (Andhra Pradesh)/[2020] 42 GSTL 328 (Andhra Pradesh)[01-08-2019]

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GST : Where order passed by Competent Authority was not uploaded by department in GST portal and against said order assessee filed appeal before Appellate Authority manually and Appellate Authority rejected appeal on ground that it was not filed electronically through GST web portal in Form GST APL-01, said Authority was to be directed to entertain appeal and pass appropriate order after hearing assessee

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[2020] 115 taxmann.com 429 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Sri Siddhi Kalko Bhagavan Stone Crusher

v.

Assistant Commissioner (ST)\*

M. SEETHARAMA MURTI AND MS. J. UMA DEVI, JJ.

W.P. NO. 9324 OF 2019

AUGUST 1, 2019

Section [107](#) of the Central Goods and Services Tax Act, 2017, read with rule [108](#) of the Central Goods and Services Tax Rules, 2017/Section [107](#) of the Andhra Pradesh Goods and Services Tax Act, 2017, read with rule [108](#) of the Andhra Pradesh Goods and Services Tax Rules, 2017 - Appellate Authority - Appeals to - Appellate Authority rejected appeal of assessee on ground that it was not qualified for admission, as assessee did not adhere to provisions of section 107 and rule 108, i.e., appeal was not filed electronically through GST web portal in Form GST APL-01 - Assessee submitted before High Court that as per rule 108, it was entitled to file appeal either electronically or otherwise and in instant case unless order, which was being sought to be impugned, was uploaded in web portal, it was not possible to prefer appeal electronically and in instant case said requirement of uploading order was not fulfilled - In light of rule position obtaining, Appellate Authority ought to have entertained appeal or in alternative ought to have given an opportunity to it to comply with provisions instead of rejecting appeal - Whether impugned rejection order deserved to be set aside - Held, yes - Whether Appellate Authority was to be directed to entertain appeal and pass appropriate order after giving an opportunity of hearing to assessee - Held, yes [Para 5] [In favour of assessee]

(NR)

C. Sanjeeva Rao, Adv. for the Petitioner.

ORDER

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**M. Seetharama Murthi, J.** - In this Writ Petition, under article 226 of the Constitution of India, the challenge is to the rejection order, dated 22-9-2018, of the learned Appellate Joint Commissioner (ST), Vijayawada, whereby the appeal of the petitioner was rejected on the ground that the appeal of the petitioner is not qualified for admission, as the petitioner did not adhere to the provisions in Section 107 of A.P.G.S.T. Act, 2017, and Rule 108 of APGST Rules, 2017.

2. Learned counsel for the petitioner having drawn the attention of the Court to the said provisions aforementioned would contend as follows: 'As per the said Rule, an appeal to the appellate authority under

sub section (1) of section 107 shall be filed in the required form, along with the relevant documents either electronically or otherwise and hence, the petitioner is entitled to file the appeal either electronically or otherwise and that in the case on hand unless the order, which is being sought to be impugned is uploaded in the web portal, it is not possible to prefer an appeal electronically and that in the instant case the said requirement of uploading the order is not fulfilled. In the light of the rule position obtaining, the appellate authority ought to have entertained the appeal or in the alternative ought to have given an opportunity to the appellate/petitioner to comply with the provisions aforementioned instead of rejecting the appeal by the impugned order.'

3. Learned Standing Counsel for the respondents would submit that no notification as envisaged under Rule 108 aforementioned was issued by the Commissioner. However, he would point out from the impugned order that it was noticed in the said order that the appeal is not filed electronically through G.S.T Web Portal in form GST APL-01, even after ample opportunity was given to the petitioner.

4. Having regard to the facts and submissions and as the case of the petitioner requires adjudication on merits and when substantial justice is pitted against technical considerations, it is always necessary to prefer the ends of justice, we are of the considered view that the request of the petitioner merits consideration. Such course also would help the petitioner in having his cause decided on merits.

5. In the result, the writ petition is allowed and the impugned rejection order is set aside with a direction to the 2nd respondent to entertain the appeal of the petitioner and pass appropriate orders, in accordance with the procedure established by law, however, after giving an opportunity of personal hearing to the petitioner.

No order as to costs.

6. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

S.K. JAIN

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\*In favour of assessee.