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[2024] 159 taxmann.com 514 (Andhra Pradesh)[02-02-2024]

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**GST : Where technical glitch led to use of alternative form for pre-deposit by assessee, and delay condoning petitions were overlooked in impugned order , rejection of appeals solely based on form used was deemed procedurally unfair, necessitating reconsideration by Respondent authority**

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[2024] 159 taxmann.com 514 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Manjunatha Oil Mill**

**v.**

**Assistant Commissioner (ST) (FAC)\***

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

W.P. NOS. 1767, 1780, 1964, 1970, 2153 & 2177 OF 2024

FEBRUARY 2, 2024

**Pre Deposit - Condonation of Delay - Assessee intended to prefer appeals against Assessment Orders but encountered technical issues while making pre-deposit of 10 per cent of demanded tax via prescribed Form APL-01 - Due to technical glitch, assessee made payment through Form GST DRC-03 instead, which was accepted by Web Portal - However, assessee's appeals were rejected on grounds that pre-deposit was made through wrong format - Assessee filed separate applications to condone delay, but Respondent Authority did not mention or consider these delay condoning petitions in impugned orders - Rejection of appeals led to enforcement of assessment orders by attaching assessee's bank accounts - Assessee contended that due to a technical glitch, they were compelled to make pre-deposit through Form GST DRC-03 instead of APL-01, asserting it was not wilful act, further contending that their petitions for condoning delay were disregarded by Respondent Authority - HELD : High Court found merit in assessee's contentions regarding non-consideration of his delay condoning petitions by Respondent Authority - High Court acknowledged that whether assessee were forced to use Form GST DRC-03 instead of APL-01 due to technical issues is factual question - Hence, matter was remanded back to Respondent Authority to consider reasons in delay condoning petitions and pass appropriate orders accordingly [Section [107](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 6 and 7] [In favour of assessee/Matter Remanded]**

**M.V.J.K. Kumar**, Learned Counsel *for the petitioner.*

## **ORDER**

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**U. Durga Prasad Rao, J.** - Heard Sri M.V.J.K. Kumar, learned counsel for the petitioners and the learned Government Pleader for Commercial Tax-II.

2. The grievance of the petitioners in all the batch of Writ Petitions is common as ventilated by the learned counsel for the petitioners. The Writ Petitioners intended to prefer appeals against the Assessment Orders passed in the above batch of Writ Petitions and when they intended to make pre-deposit of 10% of the demanded tax as a condition precedent for preferring the appeal through the official Web Portal under Form APL-01 on 19-11-2022, due to some technical glitche, the Web Portal did not permit them to make the payment and therefore, the petitioners made the payment through Form DRC-03 on 19-11-2022 and the same

was accepted by the Web Portal. The learned counsel would submit that however their appeals were rejected on the main ground that the petitioners have made the pre-deposit through Form GST DRC-03 instead of the prescribed Form APL-01 and the said authority has no power to consider such payments made in the Form GST DRC-03 as 10% pre-deposit for registering the appeals. He would further submit that it is only because of the technical glitch that was occurred on 19-11-2022, the petitioners could not make the pre-deposit through the prescribed Format APL-01 and had to pay through Form GST DRC 03 and therefore, the said act of the petitioners may not be treated as a willful one.

3. Learned counsel would further submit that since in the process delay was occurred, the petitioners have filed separate applications to condone delay, but the Respondent No. 2 in the impugned Orders have not mentioned about the delay condoning petitions and without considering the reasons for delay, simply rejected the appeals on the ground that the pre-deposit of 10% was made through a wrong format *i.e.*, Form GST DRC-03. The learned counsel thus requested the Court to direct the respondent No. 2 to consider the reasons submitted by the petitioners for the delay in filing the appeals in the right perspective and pass appropriate orders.

4. Learned Government Pleader opposed the petitions stating that when the Act prescribed Form APL-01 to make the pre-deposit, the petitioners could not have chosen another format, which is a violation of the procedure, and therefore, the respondent No. 2 had rightly rejected the appeals.

5. On perusal of the material filed along with the Writ Petitions, the petitioners have filed the copies of the delay condoning petitions submitted to the Respondent No. 2. Thus, we find force in the submission of the learned counsel for the petitioners that the petitioners have filed delay condoning petitions before the respondent No. 2. However, in the impugned Orders, nothing is mentioned about the filing of the delay condoning petitions and the non satisfaction over the reasons submitted for such delay. Be that as it may, as rightly submitted by the learned counsel for the petitioners, the appeals were rejected on the main ground that the pre-deposit was made through wrong format *i.e.*, Form GST DRC-03 instead of Form APL-01.

6. In this regard, the submission of the learned counsel for the petitioners is that due to technical glitch, they had to make the pre-deposit through Form GST DRC-03 instead of APL-01 and it is not a willful act. Whether the petitioners were forced to make payment of pre-deposit through Form GST DRC-03 instead of APL-01 is a question of fact, which has to be considered in the light of other surrounding facts. In our considered view, the respondent No. 2 is the proper authority to consider the above factual aspects and to decide the fate of delay condoning petitions in right perspective. Therefore, the impugned Rejection Orders are *set aside* and the matters are remanded back to the respondent No. 2 with a direction to consider the reasons in the delay condoning petitions submitted by the petitioners and after affording an opportunity of hearing to them pass any appropriate orders in accordance with governing law and rules expeditiously.

7. Since it is submitted that pursuant to the rejection of appeals, the respondent No. 3 has attached the bank account of the petitioners for enforcement of the assessment orders, and pleaded urgency in the matters, we direct the petitioners to appear before the Respondent No. 2 on 8-2-2024 and the respondent No. 2 shall take up the matters on that day.

8. Accordingly, all the Writ Petitions are disposed of. No costs.

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

RITA

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\*In favour of assessee.