
[2023] 157 taxmann.com 91 (Andhra Pradesh)[04-07-2023]

GST : Where assessee a firm headed by old woman who could not pursue matter during COVID and further, accountant of assessee was absent for a period of seven months, was to be condoned in filing appeal against adjudication

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[2023] 157 taxmann.com 91 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Bheemaneni Projects

v.

Deputy Assistant Commissioner (ST)-III*

U.DURGA PRASAD RAO AND SMT. VENKATA JYOTHIRMAI PRATAPA, JJ.

WRIT PETITION NO. 2706 OF 2023

JULY 4, 2023

Appeals to Appellate Authority - Limitation period - Condonation of delay - Period 07-2017 to 03-2020 - Show cause notice was issued to assessee under section 74 stating that certain turnover escaped from tax and same was treated as suppression of turnover - Due to failure of assessee to file a reply to show cause notice, adjudication order imposing penalty was passed against assessee - Petitioner filed appeal against adjudication order but same was rejected by Appellate Authority on ground that appeal was filed beyond limitation period - Petitioner stated that firm was headed by a woman who was aged about 72 years and during Covid pandemic, she could not pursue matter - Further, accountant of petitioner could not pursue matter as he was absent for a period of seven months due to Covid - HELD : Inability pleaded by assessee was convincing - Therefore, writ petition was allowed and appellate order to be rejecting appeal on ground that same was filed beyond condonable period was to be set aside and consequently, delay of 112 days in filing appeal was to be condoned [Section [107](#), read with section [74](#) of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 12 to 14] [In favour of assessee]

CASES REFERRED TO

Asstt. Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd. [[2020](#)] [116 taxmann.com 417/36 G.S.T.L. 305 \(SC\)](#) (para 11).

ORDER

Smt. Venkata Jyothirmmai Pratapa, J. - The writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

"to issue an appropriate Writ or Order or direction in the nature of Writ of Mandamus declaring the action of the 1st respondent in passing the impugned order of adjudication dated 13-4-2022 and rejection order passed by the 2nd respondent on 7-1-2023, rejecting the appeal at the admission stage, as illegal, arbitrary, violation of principles of natural justice, contrary to the provisions of GST Act and Rules 2017, without jurisdiction authority and contrary to the articles 14, 19 (1) (g), 21 and 265 of the Constitution of India and consequently to set aside the same and pass such other orders as deemed fit and proper under the circumstances of the case".

2. The case of the petitioner in nut shell is that:

Petitioner is a firm headed by a woman aged 72 years, engaged in works contracts, by providing services i.e., running buses to VIT, Amaravathi and Ambulance Services. The petitioner also engaged in supply of goods under GST Act, 2017. The registration of the firm earlier to the introduction of the GST Act, 2017 was under APVAT Act, 2005, CST Act, 1956 and Finance Act 1994 and was subsumed in GST Act, 2017.

(b) As authorized by the Joint Commissioner (ST), Chittor, the 1st respondent made a surprise visit on 21-10-2020, to the petitioner's firm. Thereafter, the 1st respondent issued notices stating that certain turnover was escaped from tax and the same was treated as suppression of turn over for the Assessment period 07/2017 to 03/2020. Form No. DRC-01A was issued to pay the tax, penalty and interest as per section 74 (5) of the GST Act, 2017, by the 1st respondent. As the petitioner has not filed any objections, a show cause notices in Form DRC-01 was issued.

(c) Petitioner has filed a reply stating that she could not furnish the details as the Covid was prevailing and explained the difficulties to submit the details. Petitioner also expressed willingness to submit the invoice within few days. Under the threat of arrest, a statement has been obtained from the petitioner undertaking to pay CGST and SGST. Petitioner requested the authority to grant 10 days time to submit all the details, because of Covid pandemic. A further show cause notice dated 2-3-2022 and personal hearing dated 10-3-2022 were sent to the petitioner. The 1st respondent finally issued final notice and personal hearing on 11-3-2022 to appear before the authority on 21-3-2022.

(d) Petitioner though received notice, could not file reply. On 13-4-2022, the 1st respondent passed the impugned order. The said order was received by Sri V. Dhanesh, who is accountant of the firm. The said accountant suffered Covid pandemic for a period of six months and was on bed rest for one month. Neither the petitioner firm nor its partners knew about the impugned order passed by the 1st respondent as accountant viz., Sri V. Dhanesh is absent for seven months.

(e) Petitioner filed appeal before 2nd respondent with a delay of 81 days. The appeal came to be rejected by the 2nd respondent, since the appeal filed beyond the condonable period of limitation, which is impugned in the present petition.

(f) 1st respondent has issued a garnishee notice to the respondents Nos. 4 and 5, directing them to pay the disputed amount of Rs. 6,20,05,487/-. The order impugned passed by 1st respondent shows the disputed amount as Rs. 6,54,67,099/-. The amounts, which were paid by the petitioner, were not deducted either in the adjudication order or in the garnishee notice.

(g) Petitioner further stated that the matter may be remitted to 1st respondent, giving opportunity to petitioner to file necessary material. She has no effective and efficacious alternative remedy, as per the Act, to address her grievance.

3. Heard Sri M.V.J.K. Kumar learned counsel for the petitioner and learned Assistant Government Pleader, representing the respondents for the Commercial Taxes.

4. As requested by learned counsel on behalf of both parties, the Writ Petition is being disposed of at the stage of admission.

5. The challenge in this Writ Petition is to the order passed by the 2nd respondent dated 7-1-2023, rejecting the appeal filed by the petitioner challenging the assessment order dated 13-4-2022, passed by the 1st respondent, at the stage of admission, on the ground that the appeal was filed beyond the condonable period of limitation.

6. Learned counsel for petitioner would submit that the Managing partner of the petitioner's firm is a woman of 72 years. Mr. V. Dhanesh, Accountant of the petitioner's firm received the assessment order dated 13-4-2022, passed by the 1st respondent. But as the accountant suffered from Covid for a period of seven months, he could not attend the office. The partner of the petitioner's firm and other partners do not have any knowledge about the service of the adjudication order. The 2nd respondent summarily rejected the appeal on the ground that it is filed beyond the period of limitation. The disputed tax involved in this Case is Rs. 6,54,67,099/-. Hence, he prays to *set aside* the impugned order passed by the 2nd respondent.

7. *Per contra*, the learned Government Pleader would submit that when the petitioner filed appeal beyond the condonable period of limitation, the 2nd respondent has rightly rejected the appeal at the admission stage. There are no grounds to *set aside* the order impugned and prays to dismiss the petition.

8. The order impugned would demonstrate that the authorized representative of the petitioner appeared before the 2nd respondent for personal hearing and explained the reason for the delay occurred in approaching the Appellate Authority. At this juncture, it is appropriate to refer section 107 of the Act, which speaks about filing of the Appeal.

"Number of days prescribed for filing of the appeal against the Assessment Order as per section 107 (1) of the Act is, three (03) months."

On perusal of the record, it is observed that the adjudicating authority passed impugned order on 13-4-2022. The order was served on Mr. V. Dhanesh on the very same day. The petitioner ought to have filed the Appeal by 12-7-2022, but the petitioner filed the appeal on 1-11-2022, with a delay of 112 days.

9. As per clause (4) of section 107 of the Act, the period of one month of delay in filing the appeal, can be condoned, for any sufficient reasons. After deducting the period of one month, which is a condonable period as per the Act, still the delay of 81 days in preferring the appeal is visible from the record. Respondent No. 2 passed order impugned, rejecting the appeal at the admission stage, on the point that the appeal has been filed with a delay beyond the condonable period of limitation.

10. The medical certificate of Mr. V. Dhanesh is placed on record. No contrary material is filed, refuting the contents of the medical certificate. Indeed, the right of appeal of a party is creature of statute and since, it is a statutory remedy. The right of appeal under section 107 of the Act is also subject to certain conditions. It is not in dispute that, the 2nd respondent has no authority to admit the appeal, when it is filed beyond the condonable period of one month of limitation as per the statute. The petitioner herein expressed her difficulty in filing the appeal within the time, since she has no knowledge about service of adjudication order on the accountant viz., Mr. Dhanesh.

11. Needless to say that the High Court cannot exercise its' jurisdiction under section 226 of the Constitution of India, where a statutory appeal is filed beyond the condonable period of limitation as a matter of course. The Hon'ble Apex Court while dealing with the similar question under section 35 of AP VAT Act, 2005 in *Asstt. Commissioner (CT) LTU v. Glaxo Smith Kline Consumer Health Care Ltd.* [2020] 116 taxmann.com 417/36 G.S.T.L. 305 (SC), held as under:

"When a Writ petition is filed challenging the order of the authority dismissing the appeal on the ground that it is preferred beyond the condonable period, the petitioner has to substantiate the plea of inability to file appeal within prescribed period."

Learned counsel for the petitioner would submit that the petitioner shall be given an opportunity to contest the matter in appeal, against the original assessment order, by putting any condition to deposit same percentage of disputed tax. No prudent man would keep quiet, without filing the appeal against the said order, since, the disputed tax is huge amount in crores of rupees.

12. Learned counsel for petitioner formidably urges that the petitioner is aged about 72 years and during the Covid pandemic, she could not pursue the matter, since the accountant is absent for a period of seven months.

13. As the appeal against the order impugned passed by the 1st respondent is a statutory remedy, such right cannot be allowed to die. Since we are convinced with the inability pleaded by the petitioner, we considered it apposite to dispose of this Writ Petition by imposing suitable conditions.

14. In the result, this writ petition is allowed and the impugned order dated 7-1-2023 passed by the 2nd respondent rejecting the appeal filed by the petitioner on the ground that the same was filed beyond the condonable period is *set aside* and consequently, the delay of 112 days in filing the appeal is condoned subject to the petitioner depositing 20% of the disputed tax in addition to the amount if any already deposited at the time of filing the appeal and paying costs of Rs. 10,000/- with the High Court Legal Services Committee within six weeks from the date of receipt of copy of the order, upon which, the 2nd respondent shall admit the appeal filed by the petitioner and after affording an opportunity of hearing to both parties, dispose of the appeal in accordance with the governing law and rules expeditiously.

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

*In favour of assessee.