

[2021] 128 taxmann.com 59 (Andhra Pradesh)/[2021] 51 GSTL 8 (Andhra Pradesh)/[2021] 88 GST 4 (Andhra Pradesh)[15-03-2021]

**GST : Where Competent Authority passed an assessment order on assessee and said order was not uploaded on GST common portal and assessee against assessment order filed an appeal before Appellate Authority manually and Appellate Authority rejected appeal on sole ground that same was not filed electronically, Appellate Authority was to be directed to receive appeal filed by assessee and pass appropriate order in accordance with law**

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[2021] 128 taxmann.com 59 (Andhra Pradesh)

**HIGH COURT OF ANDHRA PRADESH**

**Sri Lakshmi Venkateswara General Merchants and Commission Agents**

**v.**

**State of Andhra Pradesh\***

U. DURGA PRASAD RAO AND B. KRISHNA MOHAN, JJ.

WRIT PETITION NO. 24150 OF 2020

MARCH 15, 2021

**Section [107](#) of the Central Goods and Services Tax Act, 2017/ Section [107](#) of the Andhra Pradesh Goods and Services Tax Act, 2017 - Appellate Authority - Appeals to - Period July, 2017 to February, 2018 - Competent Authority passed an assessment order dated 30-5-2018 on assessee and raised tax demand upon it - Said order was not uploaded by Competent Authority on GST common portal - Assessee against assessment order dated 30-5-2018 filed an appeal before Appellate Authority manually - Appellate Authority vide order dated 11-12-2019 rejected appeal filed by assessee on sole ground that same was not filed electronically - Whether order passed by Appellate Authority deserved to be set aside - Held, yes - Whether Appellate Authority was to be directed to receive appeal filed by assessee and after hearing assessee pass appropriate order in accordance with law - Held, yes [Para 12] [In favour of assessee]**

**Circulars and Notifications : [Notification No. 6/2017 - Central Tax \(Rate\), dated 28-6-2017](#)**

**(NR)**

**B. Srinivasa Raw, Counsel for the Petitioner.**

**ORDER**

**U. Durga Prasad Rao, J. -** In the instant writ petition, the petitioner challenges the AJC order No. 4959/29-1-2020 dated 11-12-2019 served on 22-2-2020 passed by the 3rd respondent rejecting the appeal filed by the petitioner against the assessment order dated 30-5-2018 passed by the 4th respondent.

**2.** The petitioner deals in edible and non-edible oils and it is a registered dealer under the APGST Act, 2017.

- (a) The 4th respondent consequent to the inspection of petitioner's business premises on 3-2-2018, issued a show cause notice in Form GST DRC-02 (APGST) on 22-3-2018 in respect of a differential turnover involving a tax liability of Rs. 1,72,920/-. The petitioner submitted its explanation. However, the 4th respondent passed assessment order dated 30-5-2018 fixing tax liability of Rs. 1,72,920/- on the differential turnover of Rs. 69,16,797/- for the tax period July 2017

to February 2018. The 4th respondent passed a separate assessment order for equal sum of tax under the provisions of the CGST Act, 2017.

- (b) Aggrieved by the two assessment orders under CGST Act, 2017 and APGST Act, 2017, the petitioner filed appeals in the office of the 3rd respondent on 28-6-2018 along with proof of payment of pre-deposit @ 10% of the disputed tax which was received by the office of the 3rd respondent on 28-6-2018.
- (c) As per Section 107 of the CGST Act, appeal has to be preferred within three months from the date on which the assessment order is communicated. In the instant case, the assessment order was passed by the 4th respondent on 30-5-2018 which was received by the petitioner on 5-6-2018 and the appeals were filed on 28-6-2018 within time.
- (d) The orders dated 30-5-2018 under the provisions of the APGST Act, 2017 and the CGST Act, 2017 were not uploaded by the 4th respondent on GST common portal. Since there is no stipulation in the appeal provision that the appeal has to be invariably filed online on GST portal, the petitioner filed appeal papers in the office of the 3rd respondent in person and obtained acknowledgment from the office of the 2nd respondent.
- (e) Later, in response to the check memo, issued on 4-9-2019, the petitioner gave reply on 17-9-2019. The substance of the check memo was that the appeal was not filed on GST portal and in reply, the petitioner submitted that the proceedings of assessment under both the Acts were served on the petitioner manually on 5-6-2018 but not by uploading through online and as the efforts made by the petitioner to file appeal before the appellate Authority through online were not successful as the GST common portal failed to open, the petitioner had to file the appeal manually. However, the appeal was rejected on the sole ground that the same was not filed electronically *vide* impugned order dated 11-12-2019.
- (f) The 3rd respondent has no authority to reject the appeal. The petitioner complied with the statutory condition of pre-deposit @ 10% of the disputed tax. The impugned order was served on the petitioner on 22-2-2020. As against the impugned appeal rejection order, an appeal ought to have been presented on or before 21-5-2020 before the Appellate Tribunal. Since there is no appellate tribunal constituted, the question of applicability of any limitation period does not arise. Further, the wife of the petitioner succumbed to corona and therefore, the petitioner filed the writ petition.

3. Learned Government Pleader filed counter on behalf of the 3rd respondent and opposed the writ petition.

4. Heard learned counsel for the petitioner, Sri B. Sriniva sa Rao, and learned Government Pleader representing learned Additional Advocate General-II appearing for the respondents.

5. The Counsel for the petitioner submits that since the Assessment Order copies were received manually, there was no occasion for the petitioner to submit grounds of appeal electronically as he has to file the order copies and other relevant documents along with the grounds of appeal. Further, Rule 108 of APGST Rules, 2017 gives liberty to an appellant to file an appeal with required forms and relevant documents "either electronically or otherwise as notified by the Chief Commissioner". Since the Chief Commissioner has, as of now, not notified any particular form for filing appeal, the appellant is at liberty to file the appeal by choosing either mode. He further argued that in fact the petitioner tried to upload the appeal electronically through the GST portal, but as the portal did not open, he had resorted to manual mode and the same was accepted by the office of the 3rd respondent *vide* acknowledgment dated 28-6-2018. In spite of the same, he lamented, the appeal was rejected on the sole ground that it was not filed electronically. He relied upon the judgment in W.P.No.3308 of 2021 dated 11-2-2021 of a Division Bench of this Court to contend that in similar circumstances, this Court directed the respondent Department to receive the appeal manually and pass appropriate orders.

6. Per contra, learned Government Pleader contended that as per Rule 108 of the GST Rules, an appeal should invariably be filed electronically but not by other mode. On two propositions, he sought to buttress his argument.

7. Firstly, referring to Rule 108(1), he argued that the phraseology "either electronically or otherwise as may be notified by the Chief Commissioner" should be comprehended in such a manner that electronic mode of filing is mandatory, since the word "shall" is employed some words prior to the word "electronically". Then, the remaining part *i.e.*, "otherwise as may be notified by the Chief Commissioner" should be understood that

the other mode of filing including manual filing is permissible, if it is so notified by the Chief Commissioner. Since such notification is not given, it should be understood that appeal should be filed only electronically.

8. To appreciate the above argument it is apposite to reproduce Rule 108 which reads thus:

Appeal to the Appellate Authority

- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Chief Commissioner, and a provisional acknowledgment shall be issued to the appellant immediately.
- (2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule 26.
- (3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgment, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:

**Provided** that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgment and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

9. The words "electronically" and "otherwise" are co-related with the two conjunctions *i.e.*, "either" and "or". Grammatically, these two conjunctions are used in co-relation with some words to indicate the alternativity or choice between the two persons, things, or events. In the instant case, the word "electronically" is prefixed with the conjunction "either" and the word "otherwise" is prefixed with the conjunction "or". From this usage, what can be deduced is that the mode of filing is a choice between electronic and other form (usually, manual form), as may be notified by the Chief Commissioner. Since admittedly notification is yet to be given by the Chief Commissioner, appeal can be filed in either manner. The mandate of the word "shall" in Rule 108(1) applies to Form GST APL-01 but not to the word "electronically". In my view, if the word "shall" was intended to govern the word "electronically" also, the word "either" would not have been posited immediately before the word "electronically" because the phrases "shall electronically" and "either electronically" are oxymorons. In W.P.No.3308 of 2021, a Division Bench of this Court expressed similar view as follows:

"10. As can be seen from Rule 108(1) of APGST Rules, 2017, the language employed therein is as clear as crystal to the effect that an appeal to the appellate authority under section 107(1) of the APGST Act shall be filed along with form GST APL-01 and the relevant documents 'either electronically or otherwise as may be notified by the Chief Commissioner'. So, till the Chief Commissioner specified one particular mode of filing, the concerned appellant can choose to file the appeal either electronically or otherwise *i.e.*, manually. In that view, the interpretation of the 1st respondent that since the Chief Commissioner has not given notification that the manual filing of the appeal can be accepted by the appellate authority, the appellant cannot file the appeal in manual form is contrary to the purport of Rule 108(1) of APGST Rules, 2017."

So, the first argument of learned Government Pleader cannot be countenanced.

10. Secondly, referring to rule 108(2) and Rule 26 of the APGST Rules, learned Government Pleader argued that the grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed as specified in rule 26. Whereas rule 26 specifies the method of authentication of applications and other documents including "appeals" saying that the documents including appeals shall be submitted electronically with a digital signature certificate or through e-signature as specified under the provisions of Information and Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Chief Commissioner in that behalf. Learned Government Pleader thus argued that since Rule 26 specifies that appeals and other documents shall be submitted electronically with a digital signature certificate or e-signature, it should be understood that appeal under Rule 108 shall be filed only electronically.

11. Rule 26(1) reads thus:

*Method of authentication*

(1) All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (Act No. 21 of 2000) or verified by any other mode of signature or verification as notified by the Chief Commissioner in this behalf:

**Provided that** a registered person registered under the provisions of the Companies Act, 2013 (Act No. 18 of 2013) shall furnish the documents or application verified through digital signature certificate."

It is true that rule 26(1) specifies that all applications including the appeals which are required to be submitted under the provisions of these Rules shall be so submitted electronically with a digital signature certificate or through e-signature or verified by any other mode of signature or verification as notified by the Chief Commissioner. So far as verification is concerned, Notification No. 6/2017-Central Tax dated 19-6-2017 was issued by the G.O.I. Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, stating that the mode of verification for the purpose of Rule 26(1) is (i) Aadhar based electronic verification code (EVC) and (ii) Bank account based one time password (OTP). Thus apparently there is a discrepancy between Rule 108(1) and (2) with regard to the manner of filing the appeal and other documents. In view of the discrepancy, the benefit must go to the subject as it is a tax law.

12. Accordingly, this Writ Petition is allowed setting aside the impugned order No. 4959/29-1-2020 dated 11-12-2019 passed by the 3rd respondent with a direction that the 3rd respondent shall receive the appeal, process the same and if there are any defects, issue suitable check memos for compliance by the petitioner, in which case, the petitioner shall comply the same within the time prescribed and resubmit the appeal either electronically or manually whereupon the 3rd respondent shall consider the appeal and after hearing the petitioner, pass appropriate order in accordance with the governing law and rules. There shall be no order as to costs.

As a sequel, interlocutory applications, if any, pending for consideration shall stand closed.

S.K. JAIN

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\*In favour of assessee.