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[2021] 124 taxmann.com 611 (Andhra Pradesh)/[2022] 56 GSTL 270 (Andhra Pradesh)[11-02-2021]

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**GST : Rejection of appeal filed by assessee manually on sole ground that same was not filed electronically was wrong**

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[2021] 124 taxmann.com 611 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Ali Cotton Mill

v.

Appellate Joint Commissioner (ST)\*

U. DURGA PRASAD RAO AND MS. J. UMA DEVI, JJ.

WRIT PETITION NO. 3308 OF 2021

FEBRUARY 11, 2021

**Appeals to Appellate Authority - Manual filing of appeal - Against order of Competent Authority, assessee attempted to file appeal electronically but same was not received by department website due to glitches - Assessee filed appeal manually before Appellate Authority and obtained acknowledgement - Appellate Authority rejected appeal on sole ground that appeal was not filed electronically - HELD : Language employed in rule 108(1) is as clear as crystal to effect that an appeal to Appellate Authority under section 107(1) shall be filed along with Form GST APL-01 and relevant documents either electronically or otherwise as may be notified by Chief Commissioner - Till Chief Commissioner specified any particular mode of filing appeal, assessee could choose to file appeal either electronically or manually - Impugned order deserved to be set aside with a direction that Appellate Authority shall receive appeal, process same and pass an appropriate order on merits [Section 107 of Central Goods and Services Tax Act, 2017 read with rule 108 of Central Goods and Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 10 and 13] [In favour of assessee]**

#### **CASES REFERRED TO**

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*Sri Siddhi Kalko Bhagavan Stone Crusher v. Asstt. Commissioner (ST)* [2020] 115 taxmann.com 429 (AP) (para 4).

#### **ORDER**

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**U. Durga Prasad Rao, J.** - The petitioner seeks writ of *mandamus* declaring the impugned appeal rejection order No. ZH370720OD36161, dated 28-7-2020, passed by the 1st respondent rejecting the appeal S.18/2019-20 filed by the petitioner after nearly one year on the ground that it was filed manually instead of electronically as contrary to rule 108(1) of APGST Rules, 2017 and consequently, direct the 1st respondent to decide the appeal on merits.

**2. The petitioner's case succinctly is thus :**

The 2nd respondent passed assessment orders dated 6-5-2019 for the tax periods 09/17 to 04/18 under the IGST, CGST and APGST Acts by imposing tax on un-fructified sales. Aggrieved, the petitioner preferred statutory appeal before the 1st respondent on 28-8-2019. As the rule 108 of APGST Rules, 2017 permits filing of appeal electronically, the petitioner had, first attempted to file the appeal electronically but the same was

not received by the Department Website due to some glitches and therefore, the petitioner filed the same manually before the 1st respondent and obtained the acknowledgement dated 28-8-2019. However, the 1st respondent passed the impugned appeal rejection order dated 28-7-2020 on the sole ground that the appeal was not filed by the petitioner electronically.

*Hence, the instant writ petition.*

3. Heard learned counsel for petitioner, Sri G.Narendra Chetty and learned Government Pleader representing the office of the Advocate General - II.

4. Learned counsel for petitioner would strenuously argue that the order of rejection is quiet contrary to rule 108 of A.P.GST Rules, 2017 inasmuch as the said Rule gives liberty to an appellant to file an appeal with required forms and relevant documents 'either electronically or otherwise as may be notified by the Chief Commissioner'. Since, as of now, the Chief Commissioner has not notified any particular form for filing appeal, the concerned appellant is at liberty to file the appeal by choosing either mode. Learned counsel would further submit that in fact the petitioner tried to upload the appeal electronically through the website of the 1st respondent but since he was not fructified due to some technical glitches, he had resorted to the manual mode and the same was accepted by the office of the 1st respondent *vide* acknowledgment dated 28-8-2019. In that view of the matter, it is quite unjust and illegal on the part of the 1st respondent to reject the appeal only on the sole ground that appeal was not filed electronically. Learned counsel relied upon the judgment of Division Bench of this Court in *Sri Siddhi Kalko Bhagavan Stone Crusher v. Asstt. Commissioner (ST)* [2020] 115 taxmann.com 429 argue that in similar circumstances this Court directed the respondent Department therein to receive the appeal and pass appropriate orders.

5. Per contra, learned Government Pleader representing learned Additional Advocate General - II would vehemently argue that as many as three check memos dated 24-2-2020, 17-3-2020 and 6-6-2020 were issued to the petitioner to comply with certain defects in his appeal but without first rectifying the defects and electronically uploading the appeal, the appellant has resorted to the writ petition, which is untenable. Learned Government Pleader sought to argue that it is only when an appellant complies with the conditions narrated in rule 108(1) of APGST Rules, 2017 *i.e.*, filing the appeal with required documents and forms, then only the question of choosing one of the modes of filing does arise (*i.e.*, either electronically or manually). When the petitioner/appellant has not complied with the check memos, he has no right to claim that his appeal which was filed manually should be accepted.

6. The point for consideration is whether there are merits in the writ petition to allow.

7. We have given anxious consideration to the facts and above respective arguments. The operative portion of the impugned order reads thus :

"As seen from the above provisions the appeal should be filed either electronically or otherwise as may be notified by the Chief Commissioner it does not mean manual filing of the appeal, till now the Chief Commissioner has not given any instruction to accept the manual filing of the appeal."

8. The above order would show that the appeal was rejected on the prime observation that though an appellant can file the appeal either electronically or otherwise, it does not mean that manual filing of the appeal can be done since the Chief Commissioner has not given any instructions to accept the manual filing of the appeal as of now. We are afraid, this interpretation of rule 108 of AP GST Rules, 2017, is not correct.

9. For better appreciation, rule 108(1) of AP GST Rules, 2017 is extracted here.

"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."

10. As can be seen from rule 108(1) of AP GST 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 AP GST 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 specifies 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 AP GST Rules, 2017.

**11.** In similar circumstances, Division Bench of this Court in *Sri Siddhi Kalko (supra)* held thus :

"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."

**12.** The other argument of learned Government Pleader representing learned Additional Advocate General - II also is not formidable. All the check memos referred to by him were issued only after filing of the appeal manually. Thereafter, the appellate authority has rejected the appeal not on the merits but on the sole ground as we mentioned *supra*. Since the rejection order is contrary to rule 108(1) of AP GST Rules, 2017, the same is liable to be set aside.

**13.** In the result, this writ petition is allowed setting aside the impugned order passed by the 1st respondent with a direction that the 1st respondent shall receive the appeal, process the same and if there are any defects in the appeal, 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 1st respondent shall consider the appeal and after hearing the petitioner, pass appropriate order on merits in accordance with the governing law and rules.

As a sequel, miscellaneous applications pending for consideration, if any, shall stand closed. No costs.

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\*In favour of assessee.