

[2022] 145 taxmann.com 599 (Andhra Pradesh)/[2023] 95 GST 557 (Andhra Pradesh)/[2023] 69 GSTL 147 (Andhra Pradesh)[15-11-2022]

GST : Against order of cancellation of registration, appellate remedy being available; writ petition was to be disposed of

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[2022] 145 taxmann.com 599 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Jayapal Reddy Gudipati

v.

Goods & Services Tax Officer\*

A.V. SESA SAI AND DUPPALA VENKATA RAMANA, JJ.

W.P. NO. 36794 OF 2022

NOVEMBER 15, 2022

**Registration - Cancellation of - Writ petition, Maintainability of - Petitioner was a diet contractor carrying on contracts with Government General Hospitals for supply of food to in-patients at subsidized price fixed by State Government - Show cause notice was issued to petitioner but it was not answered by him - Order of cancellation of registration was passed by respondent revenue official - On writ petition, HELD : Since alternate remedy was available as prescribed under section 107 of CGST Act, 2017, it was not open for petitioner to maintain writ petition - Petitioner was to be allowed to approach appellate authority [Section 29 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 7 and 8] [In favour of revenue]**

**P. Karthik Ramana**, Ld. Counsel *for the Petitioner*. **T.C.D. Sekhar**, Ld. Govt. Pleader, **N. Harinath**, Ld. Dy. Solicitor General and **Suresh Kumar Routhu**, Ld. Standing Counsel *for the Respondent*.

## ORDER

**A.V. Sesha Sai, J.** - Heard Sri P. Karthik Ramana, Learned counsel for the petitioner and Sri T.C.D. Sekhar, learned Government Pleader for State of Andhra Pradesh for Respondent Nos.1 and 3, Sri N. Harinath, learned Deputy Solicitor General of India and Sri Suresh Kumar Routhu, learned Standing Counsel for Respondent No.4.

2. An order of cancellation of registration passed by the Goods and Services Tax Officer, Jagannayakpur-1st respondent herein, dated 01.02.2022 under the provisions of section 29 of the Central Goods and Services Tax Act, 2017, is under challenge in the present Writ Petition.

3. According to the petitioner, he is a diet contractor, carrying on contracts with the Government General Hospitals for supply of food to the in-patients at the subsidized price fixed by the State Government. Preceded by a show-cause notice dated 06.12.2021, the first respondent herein issued the impugned cancellation order dated 01.02.2022. It is absolutely not in controversy that in response to the show-cause notice issued by the first respondent, the petitioner herein did not file any reply/explanation. However, at paragraphs 3 and 4 of the affidavit filed in support of the Writ Petition, the following reasons are shown by the petitioner:

"3. The Petitioner has entered into contract with the Government General Hospitals for supply of food to the in patients at the subsidized price fixed by the State Government and such supplies are classifiable as Restaurant Services taxable @ 5% under the GST Act. Accordingly, the Petitioner has been reporting the

value of supplies through the monthly returns and discharging the tax liability since December, 2018. The Petitioner did not file monthly Returns in Form GSTR-3B for the months from May-2021 to January-2022 since it did not receive bills from the Government in time. The petitioner was allotted contract by the State Government for supply of diet to the COVID-19 patients who were under quarantine in isolation wards in the Government General Hospitals, Kurnool and Kakinada. The Petitioner has executed the contracts by borrowing money by way of hand loans and from financial institutions on interest and raised bills on the Government General Hospital, Kurnool for an amount of Rs.2,80,93,215 for the period from October, 2020 to December, 2021. The bills were accepted but not paid by the Hospital in spite of repeated requests. The petitioner has approached this Hon'ble High Court vide Writ Petition No.16887 of 2022 and on the directions of this Hon'ble High Court by the order dated 20.7.2022 (Ex.P-1), the respondents have disbursed the amount in the month of August, 2022. Similarly for the food supplied to the Covid patients in the Government General Hospital, Kakinada an amount of Rs.2,79,12,042/- for the period from May, 2021 to March, 2022 is paid to the Petitioner in August, 2022 as per the Ref. Coordn. 6/100/2922, dated 16.08.2022 of the District Collector, Kakinada (Ex.P-2).

4. In these circumstances, the Petitioner could not file the Returns for the tax periods from May, 2021 to January, 2022 within the prescribed time. The GST network is so designed that a taxable person will be able to file monthly Returns in Form GSTR-3B only if he is prepared to discharge the tax liability along with interest, if any generated. The GST network does not allow to file the returns declaring the tax liability and discharge the liability along with interest at a later date. Further, until the prior months returns are filed, the filing of Returns for the subsequent period does not arise."

4. It is also pertinent to extract paragraph 7 of the Affidavit:

"The Petitioner could borrow money in July, 2022 and could not get the returns filed by his Accountant for the tax periods from May, 2021 to January, 2022 by paying tax, interest and late fee of a sum of Rs.7,80,902/-Statement of tax paid for these months is filed as Ex.P-5. However, it could not file the returns for the months from February, 2022 onwards as it is informed that its certificate of registration was cancelled and due to such cancellation, the filing of Returns for the period subsequent to the effective date of cancellation is not possible though there is liability to pay tax. The Petitioner is ready to comply with the filing of the Returns and payment of taxes along with the interest and fee due under the GST Act if it is given another chance. The Petitioner is deprived of its right to carry on the business and the right to life guaranteed under Articles 14 read with 19(1)(g) and 21 of the Constitution of India."

5. During the course of the arguments, learned Government Pleader and the learned Standing Counsel, strongly opposing the Writ Petition contended that having failed to respond to the show-cause notice and having failed to avail alternative remedy as prescribed under the provisions of section 107 of the CGST Act, 2017, it is not open for the writ petitioner to maintain the present Writ Petition under Article 226 of the Constitution of India.

6. According to the learned counsel for the petitioner, the petitioner herein is ready to furnish all the necessary information, but, in view of cancellation order, the petitioner is not in a position to furnish the same to the 1st respondent.

7. The reality remains that according to section 107 of the CGST, 2017, any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

8. For the reasons mentioned in the supporting affidavit and taking into consideration the submissions made by the learned counsel for the petitioner, this Court deems it appropriate to dispose of the Writ Petition, leaving it open to the petitioner to approach the appellant authority as per section 107 of CGST Act, 2017, within a period of one week from the date of receipt of a copy of this order and if such an appeal is filed, the same be considered and appropriate orders be passed by the appellate authority strictly in accordance with rules, within a period of four (04) weeks thereafter.

9. The Writ Petition is disposed of accordingly. No order as to costs.

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

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\* In favour of revenue.