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**[2023] 148 taxmann.com 302 (Andhra Pradesh)/[2023] 97 GST 330 (Andhra Pradesh)/[2023] 72 GSTL 323 (Andhra Pradesh)[20-01-2023]**

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**GST : Since appeal against cancellation of registration, if rejected on ground of limitation, would leave petitioner without remedy as GST Tribunal had not yet been constituted, matter was to be remanded to original authority for fresh decision**

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**[2023] 148 taxmann.com 302 (Andhra Pradesh)**

**HIGH COURT ANDHRA PRADESH**

**Sudhakar Bodala**

**v.**

**Goods and Service Tax Officer**

**U.DURGA PRASAD RAO AND T. MALLIKARJUNA RAO, JJ.**

**WRIT PETITION NO.1085 OF 2023**

**JANUARY 20, 2023**

**Registration - Cancellation of registration - Appeals filed belatedly - Registration was cancelled on account of non-furnishing of return for more than six months - Appeal filed was rejected as time barred - Appellate authority had held that appeal was filed with delay of 113 days and he was not empowered to condone delay beyond 30 days - HELD: Since GST Tribunal had not been constituted, petitioner could not be left without remedy - Matter was to be remanded to original authority to pass order in accordance with law after granting opportunity of personal hearing [Section [107](#), read with section [29](#), of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Paras 2, 5 and 6]**

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## **CASE REVIEW**

*Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner (Appeals)* [\[2022\] 142 taxmann.com 70/94 GST 376 \(Telangana\)](#) (paras 5 and 6) *relied on*.

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## **CASES REFERRED TO**

*Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner Appeals* [\[2022\] 142 taxmann.com 70/94 GST 376 \(Telangana\)](#) (para 3).

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## **ORDER**

**U. Durga Prasad Rao, J.** - The petitioner seeks writ of mandamus to set aside the impugned appeal rejection order dated 16.09.2022 passed by the 2nd respondent vide order in Appeal No.DIN 3721122210337 in Special Appeal No.SPL/VZM/447/2022-23, for not filing the appeal in time coupled with the cancellation of registration issued by the 1st respondent in Form GST REG-19 r/w Rule No.22(3) of the CGST/SGST Act 2017 on 19.05.2022 as arbitrary and illegal and pass suitable orders.

2. The petitioner's case is thus:

- (a) Vide reference No.ZA370522030812T, dated 19.05.2022, the 1st respondent cancelled the GST Registration of the petitioner w.e.f., 31.12.2021 for the reason of failure on the part of the petitioner to file returns for a period of six months prior to issuance of the show-cause notice dated 02.12.2021.

- (b) Aggrieved thereby, the petitioner filed appeal before the 2nd respondent and vide order in Special Appeal No.SPL/VZM/447/2022-23, dated 21.12.2022, the appeal was dismissed on the sole ground that the appeal was filed with a further delay of 113 days and as per Section 107 of the GST Act, the delay could be condoned for a period of one month and since the appeal was exceeding the limitation, the appellate authority is not vested with the powers to condone the said delay beyond 30 days. Accordingly, the appeal was rejected for admission.

Hence, the present writ petition.

3. Learned counsel for petitioner, Sri Singam Srinivasa Rao, would mainly urge that the petitioner has a good ground to seek for restoration of his registration and in fact, he has mentioned the reasons for non-filing of the returns and on a technical ground that appeal was filed beyond the condonable period, the appeal was rejected and since the GST Tribunal has not been constituted under sec. 109 of the CGST Act, the petitioner has no other go except invoking the jurisdiction of this Court under Article 226 of the Constitution. He would thus pray to allow the writ petition and remit the matter back to the primary authority to consider the petitioner's case and pass appropriate orders. He would rely upon the order of the Division Bench of the High Court for the State of Telangana in *Chenna Krishnama Charyulu Karampudi v. Additional Commissioner Appeals [2022] 142 taxmann.com 70/94 GST 376*, where under in similar circumstances, the writ petition was allowed and the matter was remitted to the primary authority for reconsideration of petitioner's case.

4. Learned Government Pleader for Commercial Taxes - II opposed the writ petition stating that the petitioner has not filed the appeal within the time and instead filed the appeal beyond the condonable period and therefore, the 3rd respondent has rightly rejected the appeal. Therefore, order of the appellate authority suffer no legal flaw and the writ petition is not maintainable.

5. We perused the record and also the decision in *Chenna Krishnama Charyulu's case (supra)*. In similar circumstances, learned Division Bench of the High Court for the State of Telangana having considered the fact that GST Tribunal has not been constituted under section 109 of the CGST Act and thereby, the petitioner could not be left without any remedy, held that it would be just and proper if the entire matter was remitted back to the 2nd respondent therein to reconsider the case of the petitioner and pass appropriate order in accordance with law.

6. Needless to emphasize that the above said decision applies with all its fours to the case on hand. The petitioner preferred appeal but it was rejected for the reasons discussed supra. In that view of the matter and as the GST Tribunal has not been constituted as per the provisions of the Act so as to enable the petitioner to pursue his further legal remedies, in the interest of justice, we consider it apposite to allow the writ petition and remit the matter back to the primary authority *i.e.*, 1st respondent to re-consider the case of the petitioner and after affording a personal hearing to him, pass an appropriate order in accordance with law expeditiously but not later than two weeks from the date of receipt of copy of this order.

With the above observation, this case is allowed. No costs. As a sequel, interlocutory applications pending, if any, shall stand closed.