
[2023] 149 taxmann.com 83 (TELANGANA)/[2023] 97 GST 845
(TELANGANA)/[2023] 73 GSTL 348 (TELANGANA)[16-02-2023]

GST : Where no Appellate Tribunal was yet constituted, following precedent judgment, authority had to consider afresh issue of cancellation of GST registration

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[2023] 149 taxmann.com 83 (TELANGANA)

HIGH COURT OF TELANGANA

Manikanta Agro Industries

v.

Union of India*

UJJAL BHUYAN, C.J.
AND N.TUKARAMJI, J.
W.P. NO. 4381 OF 2023
FEBRUARY 16, 2023

Registration - Cancellation of registration - Order was passed cancelling registration on account of non-filing of returns for 6 months - Appeal filed was rejected on ground of same being time-barred - As no Appellate Tribunal was yet constituted, writ petition was filed - Following precedent judgments adjudication order and order passed by appellate authority were to be set aside without going into merits - Matter was to be remanded for fresh consideration [Section 29, read with section 107 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 8 and 10] [In favour of assessee]

CASE REVIEW

Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner (Appeals) [2022] 142 taxmann.com 70/94 GST 376 (Telangana) (para 8) followed.

CASES REFERRED TO

Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner (Appeals) [2022] 142 taxmann.com 70/94 GST 376 (Telangana) (para 7).

Mohd. Mukhairuddin, Ld. Counsel for the Petitioner. **Gadi Praveen Kumar**, Ld. Dy. Solicitor General and **Ms. Sapna Reddy**, Ld. Counsel for the Respondent.

JUDGMENT

Ujjal Bhuyan, C.J. - Heard Mr. Mohd. Mukhairuddin, learned counsel for the petitioner; Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.1; and Ms. Sapna Reddy, learned counsel for respondents No.2 and 3.

2. This petition has been filed under Article 226 of the Constitution of India assailing the legality and validity of the order dated 19-1-2022 passed by respondent No.3 cancelling the Goods and Service Tax (GST) registration of the petitioner as well as the order-in-appeal dated 28-12-2022 passed by respondent No.2 dismissing the appeal filed by the petitioner against the order of respondent No.3 dated 19-1-2022.

3. Petitioner before us is a registered partnership firm engaged in the business of rice milling. After coming into force of the GST enactments, petitioner got itself registered with the GST authority. In this connection,

registration certificate was issued to the petitioner bearing registration No.36ABQFM2144J1ZZ.

4. Show cause notice dated 5-1-2022 was issued by respondent No.3 to the petitioner calling upon the petitioner to show cause as to why its GST registration should not be cancelled on account of non-filing of GST returns for a continuous period of six months. Subsequently, respondent No.3 passed the order dated 19-1-2022 cancelling the GST registration of the petitioner. However, it was clarified that such cancellation of registration would not affect the existing liability of the petitioner.

5. Aggrieved by the aforesaid order dated 19-1-2022, petitioner preferred appeal before respondent No.2 under Section 107 of the Central Goods and Services Tax Act, 2017. On the ground that the appeal was filed beyond the extended period of limitation, respondent No.2 declined to admit the appeal; rather he dismissed the same *vide* the order dated 28.12.2022.

6. Though a further appeal before the appellate Tribunal is provided under Section 112 of the Central Goods and Services Tax Act, 2017, we have been informed that such an appellate Tribunal has not been constituted in the State of Telangana. Therefore, the present writ petition has been filed.

7. Issue raised in this writ petition is no longer *res integra*.

In *Chenna Krishnama Charyulu Karampudi v. Addl. Commissioner (Appeals)* [2022] 142 taxmann.com 70/94 GST 376 (Telangana), which has been followed in subsequent decisions, this Court had remanded the matter back to the file of the primary authority to reconsider and pass appropriate order after giving opportunity of hearing to the petitioner. It was held as follows:

"We have perused the order dated 19-4-2022. This is an order passed by the first appellate authority under section 107(1) of the CGST Act. As per subsection (1) of section 107 of the CGST Act, limitation for filing appeal is three months from the date of communication of the order appealed against. Under sub-section (4) of section 107 of the CGST Act, the appellate authority may allow the appeal to be presented within a further period of one month, provided sufficient cause is shown by the appellant.

Though the lower appellate authority may be right in holding that while it may allow filing of an appeal beyond the limitation of three months for a further period of one month, therefore, by extension of limitation beyond the extended period of one month delay beyond the extended period of one month cannot be condoned, we are of the view that such a stand taken by respondent No.1 may adversely affect the petitioner. This is more so because respondent No.2 had *suo motu* cancelled the GST registration of the petitioner on the ground of non-filing of returns and as GST Tribunal has not been constituted under section 109 of the CGST Act, petitioner would be left without any remedy.

We further find that the issue pertains to cancellation of GST registration of the petitioner. In the facts and circumstances of the case, it would be just and proper if the entire matter is remanded back to respondent No.2 to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

In the light of the above and without expressing any opinion on merit, we remand the matter back to the file of respondent No.2 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in accordance with law. Needless to say, when the respondent No.2 hears the matter on remand, petitioner shall submit all the returns as per the statute."

8. Thus, following the above decision, we set aside the order dated 19-1-2022 passed by respondent No.3 as well as the order dated 28-12-2022 passed by respondent No.2 and remand the matter back to respondent No.3 for a fresh decision in accordance with law. Respondent No.3 shall afford a reasonable opportunity of hearing to the petitioner while passing the fresh order on remand. In the remand proceedings, it will be open to the petitioner to submit the GST returns as per the statute.

9. It is clarified that we have not expressed any opinion on merit.

10. Writ Petition is accordingly allowed to the extent indicated above. No costs.

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

* In favour of assessee.