
[2023] 154 taxmann.com 640 (Andhra Pradesh)[22-09-2023]

GST : Endorsement rejecting petitioner's appeal against assessment order was to be set aside as requirements for filing appeal were duly complied by petitioner

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[2023] 154 taxmann.com 640 (Andhra Pradesh)

HIGH COURT OF ANDHRA PRADESH

Kotla Kanakeswara Rao

v.

Additional Commissioner

U. DURGA PRASAD RAO AND A.V. RAVINDRA BABU, JJ.

WRIT PETITION NO. 22926 OF 2023

SEPTEMBER 22, 2023

Appeals - Appeal to Appellate Authority - Assessment order not uploaded - Petitioner challenged an endorsement in Special Appeal, where revenue had rejected petitioner's appeal against Assessment Order on two main grounds i.e. a delay in filing appeal in electronic form and a failure to deposit 10% of disputed tax - HELD: Delay in filing electronic appeal was due to non-immediate uploading of Assessment Order on official website and as per challan copy petitioner had deposited required 10% of tax at time of manual filing - Requirements for filing appeal were duly complied by petitioner, therefore impugned endorsement was to be set aside and respondent was directed to register appeal and dispose of same in accordance with law after affording opportunity of hearing to petitioner [Section 107 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017 - Rule 108 of Central Goods And Services Tax Rules, 2017/Andhra Pradesh Goods and Services Tax Rules, 2017] [Paras 8 to11] [In favour of assessee]

ORDER

U. Durga Prasad Rao, J. - The challenge in this writ petition is to the endorsement in Special Appeal No. GST/ELR/133/2021-22, dt.09-9-2022 passed by the 1st respondent rejecting the appeal filed by the petitioner against the Assessment Order dated 2-1-2022 passed by the 2nd respondent.

2. Heard learned counsel Sri Anil Bezawada representing Sri Varun Byreddy, learned counsel for petitioner and learned Government Pleader for Commercial Tax-I for respondents.

3. As can be seen from the impugned endorsement, the main reasons for rejection of appeal are:

- (i) that the original Assessment Order dated 2-1-2022 was duly served on the same date, but the appeal was filed in manual form on 28-2-2022 and later e-appeal was filed on 1-9-2022 with a delay of six months.
- (ii) the pre-requisite deposit of 10% of the disputed tax has not been paid.

On the above two main grounds the appeal was rejected.

4. Learned counsel for petitioner with regard to the first ground of rejection would submit that the petitioner has received the Assessment Order on 2-1-2022 itself, but as immediately the Assessment Order was not uploaded on the official website, he could not present the appeal in electronic form and thereby following Rule 108 of CGST Rules, he preferred the appeal in manual form on 28-2-2022. He further submit that

subsequently the petitioner received notice *vide* GST Spl.No.ELR/133/2021-22, dated 16-8-2022 from 1st respondent informing him that, since the e-appeal was not filed and only physical copies of the appeal were filed the petitioner should appear before the 1st respondent on 27-8-2022. Learned counsel would submit that since the said notice was received by him subsequent to the date of hearing, the petitioner submitted his detailed representation dated 6-9-2022 mentioning that the petitioner has filed the appeal (e-appeal) electronically on 1-9-2022 since in the interregnum, the Assessment Order dated 2-1-2022 was uploaded on the official website and requested to consider the e-appeal.

- (a) Learned counsel would submit that since in the above circumstances delay was occurred in filing the appeal in electronic form the 1st respondent ought to have taken into consideration the facts and circumstances and admitted the appeal as there was no wilful delay on the part of the petitioner in filing the appeal in electronic form.

5. With regard to the second ground, learned counsel would submit that at the time of filing the appeal in manual form, the petitioner has deposited 10% of the demanded tax *vide* e-challan in Form GST DRC-03, dated 25-2-2022 and mentioned the said fact in Column No. 13 under the caption 'pre-deposited challan' in the appeal proforma.

6. Learned Government Pleader opposed the writ petition stating that the petitioner has not complied with the direction of filing the appeal in e-form within time and therefore, the writ petition may be dismissed.

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

8. Point: As against the first ground of dismissal, the submission of learned counsel for petitioner is that, the Assessment Order dated 2-1-2022 was not uploaded on the official website immediately and therefore, he was constrained to file the appeal in manual form on 28-2-2022. The factum of non-uploading of the Assessment Order dated 2-1-2022 on official website is not disputed. In that view, the reason given by the petitioner for filing the appeal in manual form can be accepted. Subsequently, a notice was issued on 16-8-2022 by the 1st respondent directing the petitioner to appear before him on 27-8-2022 and the petitioner submitted a detailed representation dated 6-9-2022 stating that in interregnum period the Assessment Order was uploaded on the official website and the appeal in electronic form was filed on 1-9-2022. This explanation also seems to be plausible as subsequently the copy of the Assessment Order was uploaded and thereby the petitioner has filed e-appeal.

9. The Division Bench of this Court in W.P.No.3308/2021 observed that manual form of filing appeal is permissible in terms of Rule 108(1) of APGST Rules 2017. The conspectus of the facts and law shows that the explanation offered by the petitioner against the first ground of dismissal as plausible and tenable. So far as, the second ground of rejection is concerned a perusal of copy of the challan filed along with material papers shows that the petitioner made a pre-deposit of 10% of the demanded tax on 25-2-2022 *i.e.*, at the time of manual filing of the appeal. Therefore, it can be said that the said requirement was also complied.

10. Thus on a conspectus, in our view, the 1st respondent ought to have admitted the appeal filed in electronic form instead of rejecting the same under the impugned endorsement.

11. Accordingly, this writ petition is allowed and the impugned endorsement dated 9-9-2022 passed by the 1st respondent is *set aside* with a direction to the 1st respondent to register the appeal and dispose of the same in accordance with governing law and rules after affording an opportunity of hearing to the petitioner expeditiously. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.