

[2023] 150 taxmann.com 303 (TELANGANA)/[2023] 98 GST 289
(TELANGANA)/[2023] 74 GSTL 296 (TELANGANA)[31-03-2023]

GST : Where order for cancellation of GST registration was passed and appellate authority dismissed appeal of assessee as it was filed beyond extended period of limitation, since till date no GST Tribunal had been constituted, it might adversely affect assessee who would be left without any remedy, and therefore, matter was to be remanded back

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[2023] 150 taxmann.com 303 (TELANGANA)

HIGH COURT OF TELANGANA

Narayanpet Municipality

v.

Superintendent of Central Tax*

UJJAL BHUYAN, C.J.
AND N. TUKARAMJI, J.
W.P. NO. 8627 OF 2023
MARCH 31, 2023

Registration - Cancellation of registration - GST registration of assessee was cancelled - Against order of cancellation, an appeal was preferred before Commissioner (Appeals) - Appellate authority dismissed appeal as it was filed beyond period of extended limitation - Writ petition was filed and it was submitted by assessee that till date no GST Tribunal was constituted - HELD : Lower appellate authority might be right in holding that limitation for filing appeal is three months from date of communication of order and appellate authority may allow appeal to be presented within a further period of one month, but delay beyond extended period of one month could not be condoned - However, rejection of appeal adversely affect assessee - This was more so because GST registration was suo motu cancelled on ground of non-filing of returns and GST Tribunal had not been constituted and, thus, assessee would be left without any remedy - Hence, entire matter was to be remanded back [Section 29, read with sections 107 and 112 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 6, 7 and 8] [In favour of assessee/Matter remanded]

A.V.A. Siva Kartikeya, Ld. Counsel for the Petitioner. Dominic Fernandes, Ld. Counsel for the Respondent.

ORDER

Ujjal Bhuyan, C.J. - Heard Mr. A.V.A.Siva Kartikeya, learned counsel for the petitioner and Mr. Dominic Fernandes, learned counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of India petitioner seeks quashing of the order dated 22.09.2021 passed by respondent No.1-Superintendent of Central Tax cancelling GST registration of the petitioner as well as the order-in-appeal dated 16.11.2022 passed by respondent No.2- Joint Commissioner (Appeals-I).

3. Petitioner is a municipal body having jurisdiction over Naayanpet District, Telangana. It is registered with the Goods and Services Tax (GST) authorities in the State of Telangana. By the order dated 22.09.2021, respondent No.1 cancelled registration of the petitioner under GST. Against this order of cancellation,

petitioner preferred appeal before respondent No.2 assailing the legality and validity of the order dated 22.09.2021. By the order dated 16.11.2022, respondent No.2 as the appellate authority has held that the appeal was filed beyond the period of extended limitation. Accordingly, the appeal was dismissed.

4. Hence, the writ petition.

5. On a query by the Court as to why petitioner has not approached the Goods and Services Tax Tribunal (GST Tribunal) under Section 112 of the Central Goods and Services Tax Act, 2017 (briefly, 'CGST Act' hereinafter), learned counsel for the petitioner submits that till date no GST Tribunal has been constituted.

6. We have perused the order dated 16.11.2022. 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 subsection (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.

7. 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, but the delay beyond the extended period of one month cannot be condoned, we are of the view that such a stand taken by respondent No.2 may adversely affect the petitioner. This is more so because respondent No.1 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.

8. 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.1 to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.

9. In the light of the above and without expressing any opinion on merit, we remand the matter back to the file of respondent No.1 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.1 hears the matter on remand, petitioner would be at liberty to submit the returns as per the statute.

10. Writ petition is accordingly disposed of.

11. Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

KEWAL

*Partly in favour of assessee.