

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

W.P.No.39319 of 2022

ORDER: *(Per Hon'ble Sri Justice U. Durga Prasad Rao)*

The petitioner seeks writ of mandamus declaring the order in Ref.No.ZA370122025616U, dated 20.01.2022 issued by the 4th respondent cancelling the Goods and Service Tax registration of the petitioner firm on the ground that the petitioner firm did not submit returns for a continuous period of six (6) months but without providing an opportunity of hearing as arbitrary and illegal and consequently set aside the same.

2. Petitioner's case is thus:

(a) Vide reference order in Ref.No.ZA370122025616U, dated 20.01.2022 the 4th respondent cancelled the GST Registration of the petitioner w.e.f 20.01.2022 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, when the petitioner filed appeal before the 3rd respondent vide order in appeal No.ZD370822009762B, dated 27.08.2022, the same was dismissed on the sole ground that the appeal was filed with a further delay of 35 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 V.R. Reddy Kovvuri, would mainly urge that the petitioner has 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 Section 109 of the CGST Act, the petitioner has no other go except invoking the jurisdiction of this Court under Article 226 of the

Constitution of India. Learned counsel further submit that he submitted returns for July, 2021 to December, 2021 and paid tax. For the subsequent period from July, 2022 till date, he could not submit the returns since the web portal of the respondent did not permit him as his registration was cancelled. He would submit that if his returns for the relevant period are accepted and registration is revived, he is ready to submit the returns for the subsequent period till date and also pay the tax due. 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 W.P.No.27071 of 2022, 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 W.P. No.27071/2022. 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. Needles 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 remedy, this writ petition is allowed and the matter is remitted back to the preliminary authority i.e., the 4th respondent to consider the case of the petitioner and after verifying the returns

submitted by the petitioner and after affording an opportunity of personal hearing pass an appropriate order in accordance with governing law and rules expeditiously but not later than two weeks from the date of receipt of a copy of this order. It is needless to emphasize that depending upon the revival of the cancellation of his registration, the writ petitioner shall be liable to file his returns for the subsequent period till date and pay due tax. No costs.

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

U. DURGA PRASAD RAO, J

V. GOPALA KRISHNA RAO

krk
17.03.2023

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
AND
THE HON'BLE SRI JUSTICE V. GOPALA KRISHNA RAO

W.P.No.39319 of 2022

17th March, 2023

krk