

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.No.4196 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Venkatram Reddy, learned counsel for the petitioner and Ms. Sapna Reddy, learned counsel for the respondents.

2. This petition has been filed under Article 226 of the Constitution of India assailing the legality and validity of the order dated 11.12.2019 passed by respondent No.2 cancelling the Goods and Service Tax (GST) registration of the petitioner as well as the order-in-appeal dated 19.04.2022 passed by respondent No.1 dismissing the appeal filed by the petitioner against the order of respondent No.2 dated 11.12.2019.

3. Petitioner before us is a registered partnership firm engaged in the business of small creative art works, set works *etc.* 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.36AAKFJ0220F1ZU.

4. Show cause notice dated 25.11.2019 was issued by respondent No.2 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. In response to such show cause notice, petitioner submitted reply on 04.12.2019. However, reply filed by the petitioner was found to be not satisfactory whereafter respondent No.2 passed the order dated 11.12.2019 cancelling the GST registration of the petitioner. However, it was clarified that such cancellation of registration would not effect the existing liability of the petitioner.

5. Aggrieved by the aforesaid order dated 11.12.2019, petitioner preferred appeal before respondent No.1 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.1 declined to admit the

appeal; rather he dismissed the same vide the order dated 19.04.2022.

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 **M/s. Chenna Krishnama Charyulu Karampudi v. Additional Commissioner (Appeals-1)**¹, 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 19.04.2022. This is an order passed by the first appellate authority under Section 107(1) of the CGST Act. As per sub-section (1) of Section 107 of the CGST Act, limitation for filing

¹ 2022(7) TMI 82

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 11.12.2019 passed by respondent No.2 as well as the order dated 19.04.2022 passed by respondent No.1 and remand the matter back to respondent No.2 for a fresh decision in accordance with law. Respondent No.2 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.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 16.02.2023
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