

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**

WRIT PETITION No.37107 of 2022

ORDER: *(per UDPR, J)*

The petitioner seeks writ of mandamus to set aside the impugned appeal rejection order dated 25.10.2022 passed by the 3rd respondent vide order in Appeal No.DIN 20221055AS000000D1EF in Appeal No.53/2022 (V) GST, for not filing the appeal in time coupled with the cancellation of registration issued by the 1st respondent in Form GST REG-19 r/w Rule No.22(3) of the CGST/SGST Act 2017 on 03.01.2022 as arbitrary and illegal and pass suitable orders.

2. The petitioner's case is thus:

(a) Vide reference No.ZA3702220252053, dated 17.02.2022, the 1st respondent cancelled the GST Registration of the petitioner w.e.f., 31.01.2022 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, the petitioner filed appeal before the 3rd respondent and vide order in Appeal No.VIZ-GST-000-APP-

042-22-23, dated 25.10.2022, the appeal was dismissed on the sole ground that the appeal was filed with a further delay of two months and twenty 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 M.V.J.K.Kumar, would mainly urge that the petitioner has a 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. 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 of 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. Needless to emphasize that the above said decision applies with all its force 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 remedies, in the interest of justice, we consider it apposite to allow the writ petition and remit the matter back to the primary authority i.e., 1st respondent to re-consider the case of the petitioner and after affording a personal hearing to him, pass an appropriate order in accordance with law expeditiously but not later than two weeks from the date of receipt of copy of this order.

7. With the above observation, this writ petition is allowed. No costs. As a sequel, interlocutory applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

T.MALLIKARJUNA RAO, J

08.12.2022

Note: issue C.C. by 13.12.2022.

B/o.SS