

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

**AND**

**THE HON'BLE SRI JUSTICE N.TUKARAMJI**

**W.P.No.3090 of 2023**

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

Heard Mr. J.Narendar, learned counsel for the petitioner;  
Mr. B.Mukherjee, learned counsel for respondent No.1; and  
Ms. Sapna Reddy, learned counsel for respondents No.2 to 5.

2. This petition has been filed under Article 226 of the Constitution of India assailing legality and validity of the order dated 12.11.2018 passed by respondent No.5 cancelling the Goods and Service Tax (GST) registration of the petitioner as well as the order-in-appeal dated 30.01.2023 passed by respondent No.3 rejecting the appeal filed by the petitioner and affirming the order of respondent No.5.

3. Petitioner before us is a proprietary firm carrying on the business of sale of home appliances. Following introduction of GST, it had obtained GST registration bearing No.36ASCPJ1447Q2ZSD. On the ground that petitioner had not filed GST return for a continuous period of six months, show

cause notice dated 15.10.2018 was issued to the petitioner by respondent No.5 to show cause as to why its GST registration should not be cancelled. In response to the above show cause notice, petitioner submitted reply dated 26.10.2018. However, reply submitted by the petitioner was found to be not satisfactory and accordingly, respondent No.5 passed the order dated 12.11.2018 cancelling GST registration of the petitioner.

4. Aggrieved by the same, petitioner preferred appeal before respondent No.3. However, by the order under appeal dated 30.01.2023, respondent No.3 noted that GST registration of the petitioner was cancelled *suo motu* by respondent No.5. Appeal filed was found to be devoid of merit and was accordingly rejected.

5. Issue raised in this writ petition is no longer *res integra*. In **M/s. Chenna Krishnama Charyulu Karampudi v. Additional Commissioner (Appeals-1)**<sup>1</sup>, 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

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<sup>1</sup> 2022(7) TMI 82

order after giving opportunity of hearing to the petitioner. It was held as follows:

3. Petitioner is a proprietorship firm engaged in the business of carrying out works contract services. It is registered with the Goods and Services Tax (GST) authorities in the State of Telangana. By the order dated 22.01.2019, respondent No.2 cancelled registration of the petitioner under GST. Against this order of cancellation, petitioner preferred appeal before respondent No.1 assailing the legality and validity of the order dated 22.01.2019. By the order dated 19.04.2022, respondent No.1 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 19.04.2022. 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 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.

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, 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.

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.2 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.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.”

6. Following the above, we set aside the order of respondent No.5 dated 12.11.2018 and order of respondent No.3 dated 30.01.2023 and remand the matter back to the file of respondent No.5 to consider the matter afresh and after giving a reasonable opportunity of hearing to the petitioner, to pass appropriate order in accordance with law.

7. Needless to say when respondent No.5 hears the matter on remand, it would be open to the petitioner to submit the returns as per the statute.

7. Writ Petition is accordingly disposed of. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

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**UJJAL BHUYAN, CJ**

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**N.TUKARAMJI, J**

**Date: 06.02.2023**  
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