

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
&
HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

W.P.No.15490 OF 2023

ORDER: *(Per Hon'ble Smt.Justice Venkata Jyothirmai Pratapa)*

Petitioner prays for a Writ of Mandamus declaring the action of Respondent No.2 in rejecting the appeal through the impugned Order dated 03.06.2023 as illegal, arbitrary and contrary to the provisions of the Act and consequently, to set aside the same and pass such other orders may deem fit and proper in the circumstances of the case.

2. Heard Sri Vemireddy Bhaskar Reddy, learned counsel for the petitioner and the learned Government Pleader for Commercial Tax.

3. This matter is disposed of at the stage of admission as requested by Counsels on record.

Petitioner's case in nutshell :-

4. Petitioner is a registered dealer on the rolls of the Assistant Commissioner (ST) Chittor-I under the provisions of both CGST and SGST Act, 2017 and is engaged in the business of purchase and sale of iron scrap. On 21.01.2023, the Assistant Commissioner (ST) Regional GST Audit and Enforcement Wing conducted inspection in the business premises of the petitioner and ascertained taxable amount of Rs.05,48,29,347/- including Tax, Penalty and interest vide Orders under DRC-07.

(b) Petitioner challenging the correctness of the Order passed by the Assessing Authority carried the matter before respondent No.2-Additional Commissioner (ST) and the Appellant Authority, Tirupathi, Chittoor District under Section 107 of the A.P. G.S.T Act, 2017 along with a request to condone delay of 25 days in preferring the appeal. As the petitioner's accounts were frozen by the Department, he could not mobilize the funds required for pre-deposit of 10% of the disputed tax for filing appeal, which is mandatory.

(c) The entire business transactions have come to a grinding halt due to the provisional attachment orders issued to the banks as well as to the dealers to whom he has supplied goods and yet to receive the consideration.

(d) Respondent No.2 rejected the appeal on untenable grounds vide impugned Order dated 03.06.2023, since the Appellate Tribunal is yet to be constituted, petitioners approached this Court challenging the impugned order passed by the respondent No.2.

5. Learned counsel for the petitioner would submit that though the petitioner preferred appeal within condonable period of limitation, the Appellate Authority rejected the appeal without considering the genuine reason for the petitioner filing appeal with delay and passed the impugned Order, which is not tenable under law. Though it is the discretion of the appellate authority to condone the delay, discretion has to be exercised judiciously. The petitioner's bank accounts were frozen, notices issued to

the dealers to whom he has supplied the goods and yet to receive the consideration. Learned Appellate Authority ought to have considered the reason for the delay since he was prevented by sufficient cause and entertained the appeal.

6. Per contra, learned Government Pleader would submit that the impugned Order is a reasoned Order. Learned authority opined that the reason for the delay is not convincing. The petitioner, without giving any details of the financial crisis his business faced, simply mentioned that he has faced unforeseen and severe financial crisis. The plea regarding the difficulties in securing the loan amount also far from truth. Respondent No.2 rightly rejected the appeal and therefore, prays for dismissal of the petition.

7. Having heard the submission of both counsel, now the points that would emerge for determination are:

- i. Whether the petitioner was prevented by sufficient cause from presenting the appeal within the statutory period of limitation ?
- ii. To what relief ?

8. To answer the points framed supra, a keen perusal of the relevant provisions under the GST Act, 2017 would serve the purpose.

Section 107 - Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, (subject to a maximum of twenty-five crore rupees), in relation to which the appeal has been filed. Provided that no appeal shall be filed against an order under sub section (3) of the Section 129, unless a sum equal to twenty five percent of the penalty has been paid by the appellant.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

9. The word “sufficient cause” as appearing in Section 107(4) of CGST Act, 2017 for the purpose of seeking condonation of delay in filing the appeal before the Commissioner (Appeal) has been interpreted by the Hon’ble Apex Court in the light of Section 5 of Limitation Act relating to

Land Acquisition Matter would guide the Court in deciding the point. In

Collector, Land Acquisition Vs. Mst. Katiji ¹

While deciding application under Section 5 Limitation Act, “justice oriented approach” is required to be adopted. The expression 'sufficient cause' is adequately elastic to enable the courts to apply the law in a meaningful manner which subserve the ends of justice that being the life-purpose for the existence of the institution of Courts.

10. Hon'ble Apex Court laid down the following principle to be followed while dealing with an application seeking condonation of delay:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a nondeliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk."

¹ AIR 1987 SC 1353

11. Needless to say that the Commissioner (appeals) been creature of statute is not vested with the jurisdiction to condone the delay beyond the permissible period provided under the statute. The period upto which the prayer for condonation can be accepted is clearly mentioned under Section 107 (4).

12. In **Penuel Nexus Pvt.Limited Vs. Additional Commissioner Head Quarters (Appeals)**² Kerala High Court. While interpreting Section 107 (4) observed “the Central Goods and Services Tax Act is a special statute and a self-contained code by itself, and Section 107 thereof is an inbuilt mechanism and has impliedly excluded the application of the Limitation Act. It is trite, that the Limitation Act will apply only if it is extended to the special statute. It is also rudimentary that the provisions of a fiscal statute have to be strictly construed and interpreted”.

13. While considering the application for condonation of delay, it is not the length of the delay, but cause for delay which would be paramount consideration. If the cause shown as indicated under Section 107(4) of the act, such delay deserves to be condoned irrespective of the length of the delay. It does not mean that the learned Commissioner (Appeals) can condone the delay beyond the condonable period that is one month after expiry of three months after statutory period of three months.

14. However, if the cause shown is not within the proximity of case or contrary to facts or irrespective deliberate proof of material facts, the

² 2023 SCC Online Ker 4243

length of delay even if short cannot be accepted. It all depends on facts and circumstances of each case. They could not be in straight jacket formula prescribed for considering for the cause for delay.

15. Coming to the facts of the present case, the petitioner filed appeal with a delay of 25 days after expiry of three months of statutory period of limitation for filing appeal before Commissioner. The reasons assigned for the delay are as follows :

- a) The delay was caused due to an unforeseen and severe financial crisis that his business has been facing.
- b) His bank account was freezed by the Assistant commissioner (ST), Regional GST Audit & Enforcement Office, Tirupati and his Input Tax Credit was also blocked. Hence he was unable to pay the 10% of disputed tax as pre-deposit which is required to file the appeal.
- c) He made several efforts to obtain the loan from the financial institutions. He has finally obtained loan from his business associate with which he paid 10% of disputed tax as pre-deposit.

16. As seen from the order impugned, the learned Commissioner opined that the reasons are not convincing. Pertinent to say that, the learned Commissioner never denied about freezing of bank account of the petitioner and about issuing of notices to the purchasers who are yet to pay consideration to the petitioner.

17. In this context it is necessary to refer Section 107 (6) which is vivid on the point of deposit of 10% of the disputed tax which is mandatory at the time of filing of the appeal. When the bank account of the petitioner is freezed by the authorities, it is a relevant fact to consider the delay since the pre-deposit of 10% disputed tax at the time of filing of the appeal is

mandatory. The view taken by the learned Commissioner appears to be forcing the horse to run after tying the legs. The right of appeal which is created under statute is a substantive right of the party that cannot be denied by taking pedantic view. We are not convinced with the reasons assigned by the learned Commissioner in rejecting the appeal. Since, it is within the condonable period of limitation as the cause for the delay is suffice to entertain the appeal. On appreciation of the language employed under Section 107 (4) and in the back drop the factual and legal background, we are of the view that the impugned order deserves to be set aside.

18. In the result, the Writ Petition is allowed. The impugned order passed by respondent No.2 dated 03.06.2023 is set aside. Respondent No.2 is directed to restore the appeal and dispose of the matter according to law. There shall be no order as to costs.

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

U. DURGA PRASAD RAO, J

VENKATA JYOTHIRMAI PRATAPA, J.

Date:19.07.2023.

Note : LR Copy to be marked
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