<u>**HIGH COURT OF CHHATTISGARH, BILASPUR**</u>

<u>**WPT No. 130 of 2021**</u>

M/s NSPR PLR Joint Venture (A Joint Venture / Partnership Firm) Having Its Registered Office At 8-2-120/86/5-B, 2nd Floor, Sneha House, Banjara Hills, Road No. 3, Hyderabad (Telengana) Pin 500034, Through Its Partner / Authorised Representative Namely Nareedy Siva Prakash Reddy Son Of Nareedy Pullareddy, Aged Around 60 Years, R/o 4-9-178, Near Sujatha Theatre, Pulivendula, District Cuddapah, Pin 516390.

Chhattisgarh Office At House No. 63, M.L.A. Nagar, Baikunthpur, Korea Chhattisgarh. Pin - 497335.

---- Petitioner

Versus

1. Commissioner Of Chhattisgarh State Tax (GST) Commercial Tax, Raipur, Vanijyik Kar Bhavan, Civil Lines, Raipur, Chhattisgarh.
2. Additional Commissioner (Appeals) Of Chhattisgarh State Tax (GST) North Bock, Sector - 19, Atal Nagar, Raipur Chhattisgarh.
3. Joint Commissioner Of Chhattisgarh State Tax (GST) Bilaspur Division No. 1, Ambe Plaza, In Front Of New High Tech Bus Stand, Tifra, Bilaspur Chhattisgarh.
4. State Of Chhattisgarh Through The Secretary, Department Of Commercial Taxes, North Block, Sector 19, Atal Nagar Naya Raipur Chhattisgarh.

---- Respondents

For petitioner- Shri Hari Agrawal, Advocate.
For Respondent/State – Shri Rahul Jha, G.A.

<u>**Hon'ble Shri Justice Goutam Bhaduri**</u>

<u>**Order**</u>

<u>**27/08/2021**</u>

Heard.

1. The grievance of the petitioner is that summary of the tax liability was served in the month of September, 2019. Against that order the petiitoner preferred an appeal on 27/12/2019. Thereafter, the petitioner was served with a show cause notice that the amount of 10% which is required to be deposited under Section 107 (6)(b) of the Central Goods and Services Tax Act, 2017 in respect of quantum of amount has not been paid. It is contended that in response to such show cause notice dated 10/06/2020 reply was given on 10/06/2020 itself by Annexure P-8 wherein

it was apprised to the respondent that the entire tax liability has been deducted from the cash ledger, thereby the requirement of 10% of pre-requisite deposit is already stands satisfied. However, without looking into such facts the order dated 17/06/2020 has been passed on the ground that since the petitioner has failed to deposit the amount of 10% as required under Section 107 (6)(b) of the Central Goods and Services Tax Act, 2017 the appeal cannot be heard on merits. Learned counsel submits that the said order is wrong on factual grounds since the entire tax liability was deducted, therefore the deposit of 10% amount while filing the appeal would automatically stand satisfied.

2. Learned State counsel was directed to seek instructions. He would submit that the entire tax liability was deducted on 15/01/2020 as no stay was operating.

3. Perusal of the documents would show that the appeal was preferred by the petitioner on 31/12/2019 against the order of imposing the tax liability which was communicated on 12/09/2019. As per sub section-1 of section 107 of the Central Goods and Services Tax Act, 2017 the appeal was required to be filed uptill 12/12/2019 i.e. within 3 months, however it was filed with a delay on 31/12/2019 and thereafter since it was delayed and 10% amount was not paid a show cause notice was served on 10/06/2020 (Annexure P-7). The reply to show cause notice was given on 10/06/2020 wherein it was stated that the entire amount of the tax liability, which is subject of appeal has been deducted on 15/01/2020 thereby pre-deposit of 10% of the amount under appeal challenged has been recovered. However ignoring the said deduction lastly the order have been passed dismissing the appeal on 17/06/2020 by Annexure P-1 on the ground that 10% amount has not been deposited which is required as per Section 107 (6)(b) of the Central Goods and Services Tax Act, 2017.

4. If the entire amount of tax liability has been deducted on 15/01/2020 and the appeal was pending along with an application for condonation of delay, then the appellate authority can always adjudicate the facts whether there was sufficient cause to condone the delay and may further extend the period of filing for a period of one month as per section 107 (4) of the Central Goods and Services Tax Act, 2017. The appeal having been filed and the application for condonation of delay was pending, if the amount of entire liability which was imposed by order dated 12/09/2019, and tax part having been deducted then it would amount to satisfaction of deposit of tax of 10% to the account of the respondent. Consequently, the dismissal of the apeal only on the ground that 10% amount has not been deposited cannot be too technically viewed and always the petitioner can go for adjudication on merits. It is not a case that no amount is deposited till date. The entire tax part having been deducted, it is directed that the respondent shall hear the application for condonation of delay and if the application for condonation of delay is allowed, then the respondent may hear the apeal on merits. Therefore, in view of such observation, the order dated 17/06/2020 (Annexure P-1) is set aside. The respondents are directed to decide the appeal in accordance to the observation made herein before.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE

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