IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY ,THE FOURTH DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE

PRESENT

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

WRIT PETITION NO: 17349 OF 2023

Between:

M/s Godavari Projects Private Limited, Rep. by its Director, Mr. KVP Suryanarayana Raju 61/13/18, Ramalingeswara Nagar, Krishnaveni Road, Vijayawada, Krishna, Andhra Pradesh 520007

...PETITIONER

AND

1. The Assistant Commissioner (ST), Patamata circle (Goods and Service Tax Officer (State Taxes) Vijayawada
2. The Additional Commissioner (ST) Appellate Authority, Opp. Siddharda College, Moghalrajapuram, Vijayawada
3. State of Andhra Pradesh, Rep. by its Principal Secretary Rev (CT-II) Department, A.P. Secretariat, Velagapudi, Amaravathi
4. The Union of India, Rep. by its Secretary (Finance) Ministry of Finance, North Block, New Delhi 110001

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate writ or order or direction declaring the action of the 1st Respondent in cancelling the Petitioner GST registration by order dated 5.1.2023 which was rejected at the stage of admission by the 2nd Respondent in the appeal by endorsement dated 27.6.2023, contrary to the provisions of Section 29(2) of the Andhra Pradesh Goods and Service Tax Act, 2017, as illegal, arbitrary, without jurisdiction and in violation of principles of natural justice and consequently direct the authorities to revoke the cancelation of GST registration and to restore the same in the interest of justice.

Counsel for the Petitioner: SRI. SRINIVASA RAO KUDUPUDI

Counsel for the Respondents 1 to 3: GP FOR COMMERCIAL TAX

Counsel for the Respondent 4: SRI. N. HARINATH, Dy. SOLICITOR GENERAL

The Court made the following: ORDER

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

WRIT PETITION No.17349 of 2023

ORDER: *(per VJP, J))*

Petitioner seeks writ of mandamus to declare the action of the 1st respondent in cancelling the petitioner's GST Registration by order dated 05.01.2023 which was rejected at the stage of admission by the 2nd respondent in the appeal by endorsement dated 27.06.2023, contrary to provisions of Section 29(2) of A.P. GST Act, 2007 as illegal, arbitrary and for a consequential direction.

2. Heard Sri Srinivasa Rao Kudupudi, learned counsel for petitioner and learned Government Pleader for Commercial Tax representing on behalf of the respondents.

3. (a) Petitioner challenges the cancellation of the registration of the petitioner due to non-filing of returns for the successive periods of six months. Petitioner preferred statutory appeal before the Appellate Authority, however with certain delay and the same was rejected by the appellate authority on a technical

ground that the appeal was filed beyond the condonable period. Learned counsel further submits that since the Appellate Tribunal has not been constituted under section 112 of APGST Act, 2017 to carry the matter to the Appellate Tribunal. As there is no alternative efficacious remedy, this writ petition is filed. Learned counsel also relied upon the order of the Division Bench of the High Court for the State of Telangana in W.P.No.27071 of 2022, whereunder in similar circumstances, the writ petition was allowed and the matter was remitted to the primary authority for reconsideration of petitioner's case.

(b) Learned counsel for petitioner further submits that generally show-cause notices are being uploaded in the portal. The dealer could get access only when it is opened in the relevant tab on the portal. Unfortunately, the petitioner could not access the portal during the relevant time, due to which the petitioner's registration was cancelled by order dated 11.01.2023 with prospective effect. Petitioner noticed the same while filing returns for the latest period. To prove the bonafides of the petitioner, he filed the returns till the date of cancellation. Though he preferred the appeal, since it is filed beyond the condonable period, 2nd respondent by endorsement dated 27.06.2023 rejected the appeal.

Hence, the writ petition.

4. Learned Government Pleader for Commercial Taxes while opposing the writ petition would submit that, in case the Court inclined to allow the writ petition, suitable terms may be imposed.

5. It is evident that in the present case, the impugned order passed on 11.01.2023 was duly placed on the web portal on the very same day. However, petitioner filed e-appeal on 06.06.2023 with a delay of one month twenty-four days and the appellate authority rejected the appeal on the ground that it is filed beyond the condonable period.

6. It is needless to emphasize that 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 112 of the CGST Act and thereby, the petitioner should 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.

7. Upon considering the submissions made by the learned counsel for petitioner and also the decision of the High Court for the State of Telangana in W.P. No.27071 of 2022, we are of the opinion that the above said decision is helpful to the case of the petitioner. As can be seen from the impugned order dated 27.06.2023, the 1st respondent has rejected the appeal on the ground that the appeal was filed beyond the condonable period of one month twenty-four days. In that view of the matter and as the GST Tribunal has not been constituted as per the provision 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 condone the delay in filing the appeal and remit the matter back to the 1st respondent for fresh consideration, however with certain conditions.

8. Accordingly, this writ petition is allowed and the delay of one month 24 days in filing the appeal before the Appellate Authority is condoned on the condition of payment of costs of

₹20,000/- by the petitioner before the Appellate Authority within one week from the date of receipt of copy of this order. On payment of costs, the Appellate Authority shall restore the appeal and pass necessary orders in accordance with law.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

SD/- S. SRINIVASA PRASAD
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Assistant Commissioner (ST), Patamata circle (Goods and Service Tax Officer (State Taxes) Vijayawada
2. The Additional Commissioner (ST) Appellate Authority, Opp. Siddharda College, Moghalrajapuram, Vijayawada
3. The Principal Secretary Rev (CT-II) Department, State of Andhra Pradesh, A.P. Secretariat, Velagapudi, Amaravathi
4. The Secretary (Finance) Ministry of Finance, Union of India, North Block, New Delhi 110001
5. One CC to Sri. Srinivasa Rao Kudupudi Advocate [OPUC]
6. Two CCs to GP for Commercial Tax, High Court of Andhra Pradesh. [OUT]
7. One CC to Sri. N. Harinath, Dy. Solicitor General [OPUC]
8. Two CD Copies

Sdkr
AG

Sdkr

HIGH COURT

DATED:04/08/2023

ORDER

WP.No.17349 of 2023

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HIGH COURT OF ANDHRA PRADESH
AUG 2023
DESPATCHED

ALLOWING THE WP WITHOUT COSTS