HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

WRIT PETITION No.19534 OF 2023

ORDER:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri Venkatram Reddy Mantur, learned counsel for the petitioner and learned Government Pleader for Commercial Tax for the respondents.

2. This writ petition under Article 226 of Constitution of India has been filed for the following relief:

> *"pleased to issue an appropriate Writ, direction or order more particularly in the nature of a Writ of Mandamus declaration the action of the 2nd respondent in passing the assessment order in Form DRC-07, Dt.27-03-2019, for the tax period 01-07-2017 to 22-05-2018 in levying tax of CGST of Rs 14,05,924/-, SGST of Rs.14,05,924/- and penalty of CGST of Rs.14,05,924/-, SGST of Rs.14,05,924/- total comes to Rs.56,23,696/- as illegal, arbitrary, without authority of law and without jurisdiction, void ab initio and consequently set aside the same and pass such other order or orders"*

3. Learned counsel for the petitioner has placed before us a copy of the Notification No.53/2023 – Central Tax, dated 02.11.2023, which reads as under:-

"MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION

New Delhi, the 2nd November, 2023

No. 53/2023 – CENTRAL TAX

S.O. 4767(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to the said person) who shall follow the following special procedure for filing appeals in such cases:

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, 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 twelve and a half 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, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub-section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

[F. No.CBIC-20001/10/2023-GST]
RAGHAVENDRA PAL SINGH, Director"

4. Learned Government Pleader does not dispute and submits that the writ petition may be decided finally

considering the notification, the applicability of which has not been disputed to the present case.

5. Considering the aforesaid submissions and in view of the notification under which appeal can be filed upto 31.01.2024, subject to the terms and conditions of the notification, the writ petition is being disposed of finally providing that the petitioner is at liberty to approach the appellate authority complying with the terms and conditions of the notification dated 02.11.2023 in accordance with law.

No orders as to costs.

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

RAVI NATH TILHARI, J

A.V.RAVINDRA BABU, J

Date: 05.12.2023
AG