HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
AND
HON'BLE SRI JUSTICE V.GOPALA KRISHNA RAO

WRIT PETITION No.6097 of 2023

ORDER: ***(per UDPR,J)***

The petitioner seeks writ of mandamus to set aside the impugned appeal rejection order dated 24.02.2023 passed by the 2nd respondent vide order in Appeal No.DIN 3724022364115 in Special Appeal No.SPL/VJA-II/695/2022-23, for not filing the appeal in time coupled with the cancellation of registration Form issued by the 3rd respondent in Form GST REG-19 r/w Rule No.22(3) of the CGST/SGST Act 2017 on 24.06.2022 as arbitrary and illegal and pass suitable orders.

2. The petitioner's case is thus:

(a) Vide reference No.ZA370622040199H, dated 24.06.2022, the 3rd respondent cancelled the GST Registration of the petitioner w.e.f., 01.06.2022 for now filing of returns for a period of six months prior to issuance of the show-cause notice dated 13.06.2022.

(b) Aggrieved thereby, the petitioner filed appeal before the 2nd respondent and vide order in Special Appeal No.SPL/VJA-II/695/2022-23, dated 24.02.2023, which was dismissed on the ground that the appeal was filed with delay beyond the condonable power of the appellate authority.

Hence, the present writ petition.

3. Learned counsel for petitioner, Smt V.Hima Bindu, would mainly urge that the petitioner has a good ground to seek for restoration of his registration and in fact, he has mentioned the reasons for non-filing of the returns and on a technical ground that appeal was filed beyond the condonable period, the appeal was rejected and since the GST Tribunal has not been constituted under Section 109 of the CGST Act, the petitioner has no other go except invoking the jurisdiction of this Court under Article 226 of the Constitution. Learned counsel would thus pray to allow the writ petition and remit the matter back to the primary authority to consider the petitioner's case and pass appropriate orders. She relied upon the order of the Division Bench of the High Court for the State of Telanganga in W.P.No.27071 of 2022, where under in similar circumstances, the writ petition was allowed and the matter was remitted to the primary authority for reconsideration of petitioner's case.

4. Learned Government Pleader for Commercial Taxes-II opposed the writ petition stating that the petitioner has not filed the appeal within the

time and instead filed the appeal beyond the condonable period and therefore, the 2nd respondent has rightly rejected the appeal. Therefore, order of the appellate authority suffer no legal flaw and the writ petition is not maintainable.

5. We perused the record and also the decision in W.P.No.27071 of 2022. 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 109 of the CGST Act and thereby, the petitioner could 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.

6. Needless to emphasize that the above said decision applies with all its fours to the case on hand. The petitioner preferred appeal but it was rejected for the reasons discussed supra. 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 remit the matter back to the primary authority i.e., 3rd respondent to

re-consider the case of the petitioner and after affording a personal hearing to him, pass an appropriate order in accordance with law expeditiously but not later than two weeks from the date of receipt of copy of this order.

7. With the above observation, this writ petition is allowed. No costs. As a sequel, interlocutory applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

V.GOPALA KRISHANA RAO, J

15.03.2023

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