

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.27449 of 2022

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Raja Rao Algunoori, learned counsel for the petitioner; Mr. B.Mukharjee, learned counsel for respondent No.1 and Mr. B. Narasimha Sarma, learned Standing Counsel for Goods and Services Tax (GST).

2. Petitioner's registration was cancelled *suo motu* by respondent No.3 on 22.07.2019 on the ground of non-filing of returns for six months. Appeal filed by the petitioner was dismissed by respondent No.2 as the appellate authority vide the impugned order dated 25.02.2022 on the ground that the appeal was filed beyond the extended period of limitation under Section 107(1) of the Central Goods and Services Tax Act, 2017.

3. We find that issue raised in this writ petition is covered by a decision of this Court dated 27.06.2022 in W.P.No.27071 of 2022 **(M/s. Chenna Krishnama**

**Charyulu Karampudi v. Additional Commissioner
(Appeals-I)).**

4. Relevant portion of the aforesaid order dated 27.06.2022 is extracted hereunder:-

“3. Petitioner is a proprietorship firm engaged in the business of carrying out works contract services. It is registered with the Goods and Services Tax (GST) authorities in the State of Telangana. By the order dated 22.01.2019, respondent No.2 cancelled registration of the petitioner under GST. Against this order of cancellation, petitioner preferred appeal before respondent No.1 assailing the legality and validity of the order dated 22.01.2019. By the order dated 19.04.2022, respondent No.1 as the appellate authority has held that the appeal was filed beyond the period of extended limitation. Accordingly, the appeal was dismissed.

4. Hence, the writ petition.

5. On a query by the Court as to why petitioner has not approached the Goods and Services Tax Tribunal (GST Tribunal) under Section 112 of the Central Goods and Services Tax Act, 2017 (briefly, ‘CGST Act’ hereinafter), learned counsel for the petitioner submits that till date no GST Tribunal has been constituted.

6. We have perused the order dated 19.04.2022. This is an order passed by the first appellate authority under Section 107(1) of the CGST Act. As per subsection (1) of Section 107 of the CGST Act, limitation for filing

appeal is three months from the date of communication of the order appealed against. Under subsection (4) of Section 107 of the CGST Act, the appellate authority may allow the appeal to be presented within a further period of one month, provided sufficient cause is shown by the appellant.

7. *Though the lower appellate authority may be right in holding that while it may allow filing of an appeal beyond the limitation of three months for a further period of one month, therefore, by extension of limitation beyond the extended period of one month delay beyond the extended period of one month cannot be condoned, we are of the view that such a stand taken by respondent No.1 may adversely affect the petitioner. This is more so because respondent No.2 had suo motu cancelled the GST registration of the petitioner on the ground of non-filing of returns and as GST Tribunal has not been constituted under Section 109 of the CGST Act, petitioner would be left without any remedy.*

8. *We further find that the issue pertains to cancellation of GST registration of the petitioner. In the facts and circumstances of the case, it would be just and proper if the entire matter is remanded back to respondent No.2 to reconsider the case of the petitioner and thereafter to pass appropriate order in accordance with law.*

9. *In the light of the above and without expressing any opinion on merit, we remand the matter back to the file of respondent No.2 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in*

accordance with law. Needless to say, when the respondent No.2 hears the matter on remand, petitioner shall submit all the returns as per the statute.”

5. Accordingly and in the light of the above, we set aside the order dated 22.07.2019 as well as the order dated 25.02.2022 and remand the matter back to respondent No.3 to consider the grievance expressed by the petitioner against cancellation of GST registration and thereafter pass an appropriate order in accordance with law. Needless to say, when respondent No.3 hears the matter on remand, petitioner shall submit all the returns as per the statute.

6. Writ petition is accordingly disposed of.

7. Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

30.06.2022

vs