

**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
THE HONOURABLE SMT JUSTICE V.SUJATHA**

**WRIT PETITION No.1612 OF 2022**

**ORDER:-** *(Per Hon'ble Sri Justice C.Praveen Kumar)*

Heard Sri P.Karthik Ramana, learned counsel for the petitioner, Sri B.V.S.Chalapathi Rao, learned Senior Standing Counsel, Central Board of Indirect Taxes and Customs appearing for respondent Nos.1 and 2, and Sri N.Harinath, learned Assistant Solicitor General appearing for respondent No.3.

2. The present writ petition came to be filed under Article 226 of the Constitution of India seeking the following relief:-

***“.....pleased to issue a Writ of Certiorari or any other appropriate writ or order or direction –***

***(a) quashing the order of the 2<sup>nd</sup> Respondent in Appeal No.10/2020(T) GST, dated 30.7.2021 for the tax period October, 2018 and November, 2018 as illegal, arbitrary, unjustified and contrary to law and consequently direct the 2nd Respondent to admit the appeal and adjudicate the same on merits;***

***(b) or in the alternative set-aside the order in original No.YL0101-01-2019-20, dated 15.11.2019 passed by the 1st Respondent as one without jurisdiction, contrary to the circular of the Central Board of Indirect Tax and Customs and contrary to Section 75(6) & 75(7) of the Central Goods and Services Tax Act, 2017 and Andhra Pradesh State Goods and Services Tax Act, 2017 in so far as the imposition of penalty of Rs.6,86,944/- for the tax period October, 2018 and November, 2018 is concerned and pass.....”***

3. The averments in the affidavit filed in support of the writ petition show that the petitioner is a Private Limited Company engaged in manufacture of jams, fruit jellies etc., and registered under the Central Goods and Services Tax Act, 2017 (for short,

“CGST Act” and the Andhra Pradesh State Goods and Services Tax Act, 2017 (for short, “the SGST Act”). On verification of the GSTR-3B monthly returns filed during the year 2018-19, respondent No.1 found that some of the GSTR 3B returns were filed beyond the due dates and thus, resulting in delayed payment of CGST/SGST/IGST. Hence, respondent No.1 demanded payment of interest and penalty of Rs.1,92,892/- and Rs.6,50,800/- respectively. For payment of the said amount, a show cause notice was issued to the petitioner on 25.4.2019. Subsequently, an assessment order, dated 15.11.2019, came to be passed by respondent No.1 confirming levy of interest of Rs.1,92,892/- and a penalty of Rs.6,86,944/-, which is higher than the penalty actually proposed in the show cause notice.

The averments in the affidavit further show that the said order was served on the petitioner physically on 25.11.2019 informing that an appeal would lie under Rule 108(1) of the Central Goods and Services Tax Rules, 2017 (for short, “CGST Rules”). An appeal came to be filed by the petitioner *vide* Appeal No.10/2020(T)GST which came to be rejected on 30.7.2021 on the ground that it was filed beyond the period of limitation. Challenging the same, the present writ petition came to be filed.

4. Sri P.Karthik Ramana, learned counsel for the petitioner, would submit that in terms of Rule 142(5) of CGST/SGST Rules, a summary of the order issued under Section 73 shall be uploaded electronically in Form GST DRC-07 specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax. According to him, the summary of the order was uploaded by the adjudicating authority only on 18.11.2021 and as such, the

period of limitation for filing an appeal has to be reckoned from the said date. He took us through relevant provisions in support of the same. In support of his plea, he also relied upon a judgment, dated 05.03.2020 reported in **Gujarat State Petronet Limited vs. Union of India [R/Special Civil Application No.15607 of 2019]**.

5. On the other hand, Sri B.V.S.Chalapathi Rao, learned Senior Standing Counsel appearing for respondent Nos.1 and 2, opposed the same contending that the reason for rejection is not because of lack of material but on the ground of limitation and as such, the argument of the learned counsel for the petitioner that no appeal could be filed by the petitioner cannot be accepted. He, however, submits that in view of the orders passed by the Hon'ble Supreme Court extending the period of limitation due to pandemic, the discretion is always left to the Court to pass appropriate orders.

6. Section 107 of the CGST Act reads as under:-

***“107. Appeals to Appellate Authority:-***

***(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.***

***(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.***

***(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the***

***decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.***

***(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.***

***(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.***

***(6) No appeal shall be filed under sub-section (1), 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 ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.***

***(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.***

***(8) The Appellate Authority shall give an opportunity to the appellant of being heard.***

***(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.***

***(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.***

***(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:***

***Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:***

***Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under Section 73 or Section 74.***

***(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.***

***(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:***

***Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.***

***(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.***

***(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.***

***(16) Every order passed under this section shall, subject to the provisions of Section 108 or Section 113 or Section 117 or Section 118 be final and binding on the parties.”***

7. Rule 108 of the CGST Rules reads as under:-

***“Rule 108. Appeal to the Appellate Authority - (1) An appeal to the Appellate Authority under sub-section (1) of Section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.***

***(2) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in Rule 26.***

***(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL 02 by the Appellate Authority or an officer authorised by him in this behalf:***

***Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.”***

8. A perusal of above provisions would make it clear that the appeal is required to be filed in an electronic mode only and if any other mode is prescribed, then, the same is required to be notified by way of a notification. There is nothing on record to show that

any notification was issued prescribing any other mode by which an appeal could be filed. Therefore, the argument of the learned counsel for the petitioner that the time period for filing appeal would start only when the order is uploaded in GST portal cannot be brushed aside more so, in view of the Division Bench Judgment of the Gujarat High Court, which has been placed before this Court.

9. Be that as it may, the Hon'ble Supreme Court, *vide* its order, dated 10.01.2022, in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, extended the time period from 15.3.2020 to 28.2.2022 for the purpose of computing the period for filing the appeal. Since the order of respondent No.1, dated 15.11.2019, was sent by e-mail to the petitioner on 25.11.2019, which was admitted by respondent No.1 in Letter O.C.No.148 of 2021, dated 02.03.2021, three months' time would expire on 24.2.2020 and another one month from there would be on 24.3.2020.

10. Having regard to the above and taking into consideration the judgment of the Hon'ble Supreme Court referred to above, it can be, therefore, held that filing of appeal by the petitioner on 03.12.2020 is within the period of limitation.

11. Accordingly, the order, dated 30.7.2021, in Appeal No.10/2020(T)GST passed by respondent No.2 is set aside and the matter is remanded back to respondent No.2 for adjudicating the dispute on merits in accordance with law. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

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**JUSTICE C.PRAVEEN KUMAR**

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**JUSTICE V.SUJATHA**

Date : 21.3.2022  
AMD

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**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR  
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**AMD**