

[3311]

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI**

WRIT PETITION NO: 4381 OF 2023

Between:

M/s. Manikanta Agro Industries, Office at H.No.42-602/18/2, Mehdi Jung Colony Moula Ali, Malkajgiri, Malkajgiri Medchal District Telangana 500040
Rep. by its Partner, Mr. Thandu Srinivasulu

...PETITIONER

AND

1. Union of India, Rep. by its Secretary, Department of Revenue, Ministry of Finance, North Block New Delhi 110001
2. The Joint Commissioner, (Appeals-II) Office of the Commissioner (Appeals-II) GST and Central Tax, 7th Floor, GST Bhavan L.B. Stadium Road, Basheerbagh, Hyderabad 500004
3. The Superintendent of Central Tax, Malkajgiri-I Range, Plot No.16 and 21 Aditya Towers, Sri Sai Enclave, Near Check Post, Old Bowenpally, Secunderabad 500011

...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 Writ Order or Direction more particularly in the nature of Writ of Mandamus declaring the Order dated 28-12-2022 passed by the 2nd respondent vide Order in Appeal No. HYD-GST-MD-AP2-157-22-23 in Appeal No.77/2022 (MD) GST confirming the order dated 19-01-2022 in Reference No.ZA360122030593Z of the 3rd respondent cancelling the Registration Certificate No.36ABQFM2144J1ZZ of Petitioner as being illegal, arbitrary and in violation of principles of natural justice and contrary to the provisions of the CGST Act and in violation of Articles 14, 19 (1) (g) and 21 of the Constitution of India and consequently set aside the same by directing the 3rd respondent to revoke the cancellation of the GST Registration No.36ABQFM2144J1ZZ pursuant to which the Petitioner will be enabled to file all the returns and pay dues upto date

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the Order dated 28-12-2022 passed by the 2nd respondent vide Order in Appeal No. HY D-GST-MD-AP2-157-22-23 in Appeal No.77/2022 (MD) GST confirming the order dated 19-01-2022 in Reference No.ZA360122030593Z of the 3rd respondent cancelling the Registration Certificate No.36ABQFM2144 1ZZ of Petitioner

Counsel for the Petitioner: SRI MOHD MUKHAIRUDDIN

**Counsel for the Respondent No.1: GADI PRAVEEN KUMAR (Dy. SOLICITOR
GENERAL OF INDIA)**

Counsel for the Respondent No.2&3: Ms. SAPNA REDDY,

The Court made the following: ORDER

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.No.4381 of 2023

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

Heard Mr. Mohd. Mukhairuddin, learned counsel for the petitioner; Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent No.1; and Ms. Sapna Reddy, learned counsel for respondents No.2 and 3.

2. This petition has been filed under Article 226 of the Constitution of India assailing the legality and validity of the order dated 19.01.2022 passed by respondent No.3 cancelling the Goods and Service Tax (GST) registration of the petitioner as well as the order-in-appeal dated 28.12.2022 passed by respondent No.2 dismissing the appeal filed by the petitioner against the order of respondent No.3 dated 19.01.2022.

3. Petitioner before us is a registered partnership firm engaged in the business of rice milling. After coming into

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force of the GST enactments, petitioner got itself registered with the GST authority. In this connection, registration certificate was issued to the petitioner bearing registration No.36ABC FM2144J1ZZ.

4. Show cause notice dated 05.01.2022 was issued by respondent No.3 to the petitioner calling upon the petitioner to show cause as to why its GST registration should not be cancelled on account of non-filing of GST returns for a continuous period of six months. Subsequently, respondent No.3 passed the order dated 19.01.2022 cancelling the GST registration of the petitioner. However, it was clarified that such cancellation of registration would not affect the existing liability of the petitioner.

5. Aggrieved by the aforesaid order dated 19.01.2022, petitioner preferred appeal before respondent No.2 under Section 107 of the Central Goods and Services Tax Act, 2017. On the ground that the appeal was filed beyond the extended

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period of limitation, respondent No.2 declined to admit the appeal; rather he dismissed the same *vide* the order dated 28.12.2022.

6. Though a further appeal before the appellate Tribunal is provided under Section 112 of the Central Goods and Services Tax Act, 2017, we have been informed that such an appellate Tribunal has not been constituted in the State of Telangana. Therefore, the present writ petition has been filed.

7. Issue raised in this writ petition is no longer *res integra*. In **M/s. Chenna Krishnama Charyulu Karampudi v. Additional Commissioner (Appeals-1)**¹, which has been followed in subsequent decisions, this Court had remanded the matter back to the file of the primary authority to reconsider and pass appropriate order after giving opportunity of hearing to the petitioner. It was held as follows:

We have perused the order dated 19.04.2022.

This is an order passed by the first appellate authority

¹ 2022(7) TMI 82

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under Section 107(1) of the CGST Act. As per sub-section (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 sub-section (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.

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.

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

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petitioner and thereafter to pass appropriate order in accordance with law.

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.

8. Thus, following the above decision, we set aside the order dated 19.01.2022 passed by respondent No.3 as well as the order dated 28.12.2022 passed by respondent No.2 and remand the matter back to respondent No.3 for a fresh decision in accordance with law. Respondent No.3 shall afford a reasonable opportunity of hearing to the petitioner while passing the fresh order on remand. In the remand proceedings, it will be open to the petitioner to submit the GST returns as per the statute.

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9. It is clarified that we have not expressed any opinion on merit.

10. Writ Petition is accordingly allowed to the extent indicated above. No costs.

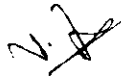
As sequel, miscellaneous petitions, pending if any, stand closed.

SD/-I NAGALAKSHMI
DEPUTY REGISTRAR
SECTION OFFICER

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- To,
1. The Secretary Union of India, Department of Revenue, Ministry of Finance, North Block New Delhi 110001
 2. The Joint Commissioner, (Appeals-II) Office of the Commissioner (Appeals-II) GST and Central Tax, 7th Floor, GST Bhavan L.B. Stadium Road, Basheerbagh Hyderabad 500004
 3. The Superintendent of Central Tax, Malkajgiri-I Range, Plot No.16 and 21 Aditya Towers, Sri Sai Enclave, Near Check Post, Old Bowenpally, Secunderabad 500011
 4. One CC to SRI. MOHD MUKHAIRUDDIN Advocate [OPUC]
 5. One CC to SRI. GADI PRAVEEN KUMAR (Dy. SOLICITOR GENERAL OF INDIA) Advocate [OPUC]
 6. One CC to Ms.SAPNA REDDY, Advocate [OPUC]
 7. Two CD Copies

KKS
GJP

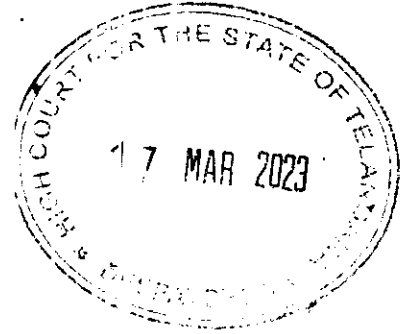


HIGH COURT

DATED:16/02/2023

ORDER

WP.No.4381 of 2023



**ALLOWING & REMANDING THE WP
WITHOUT COSTS**

BS

10 VW
16/23.