



W.P.No.32740 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM

**THE HON'BLE Mr.JUSTICE M.SUNDAR**

W.P.No.32740 of 2022

and

W.M.P.No.32128 of 2022

in

W.P.No.32740 of 2022

M/s.Raj Kishore Engineering Construction (P) Ltd.,  
Rep. by its Managing Director  
Mr.S.Rajasekaran  
Second Floor, No.34, Ambedkar Road,  
Vadapalani,  
Chennai-600 024.

... Petitioner

-Vs.-

1. The Joint Commissioner (Appeals) II  
Newry Towers, 2nd Floor,  
No-2054/I-II Avenue  
12th Main Road, Anna Nagar,  
Chennai-600 040.
2. The Assessment Officer  
Vadapalani Range  
Chennai South Commissionerate  
Newry Towers, 2nd Floor  
No-2054/I-II Avenue  
12th Main Road, Anna Nagar,  
Chennai-600 040.

... Respondents



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W.P.No.32740 of 2022

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call upon the records with regard to the Order-in-Appeal No.299/2022 dated 30.08.2022 on the file of the 1st respondent and to quash the same.

For Petitioner : Mr.J.V.Niranjan  
For Respondents : Mr.Umesh Rao .K  
Senior Standing Counsel  
for GST and Customs  
For R1 and R2

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### **ORDER**

This common order will now dispose of the captioned main writ petition and captioned 'Writ Miscellaneous Petition' ['WMP'] thereat.

2. Mr.J.V.Niranjan, learned counsel on record for writ petitioner is before this Court.

3. After hearing learned counsel for writ petitioner, as *prima facie* case has been made out, this Court was inclined to issue notice and Mr.Umesh Rao .K, learned Senior Standing Counsel for GST and



W.P.No.32740 of 2022

WEB COPY

Customs, who was present in Court accepted notice for both the respondents.

4. Owing to the narrow compass and acute angle on which the matter turns, this Court took up the captioned main writ petition in the Admission Board and this Court deems it appropriate to dispose of the main writ petition in and by this order.

5. Owing to limited perimeter of the whole matter, short facts will suffice. Short facts are that the writ petitioner, who is in the business of providing works contract service, civil works, ground leveling and cleaning services was availing 'Input Tax Credit' ['ITC'] and the same was being utilized for payment of tax liability under 'Central Goods and Services Tax Act, 2017' [hereinafter 'C-GST Act' for the sake of convenience and clarity] read with 'Central Goods and Services Tax Rules, 2017' [hereinafter 'C-GST Rules 2017' for the sake of convenience]; that this C-GST regime kicked in on and from 01.07.2017; that the writ petitioner has been filing monthly returns under what is described as



W.P.No.32740 of 2022

WEB COPY

'GSTR-1' and 'GSTR-3B' and has been paying tax; that the writ petitioner could not file GSTR-3B for the period from March 2020 to December 2020 (10 months) and therefore, could not pay the applicable tax liability; that the jurisdictional 'Assessing Officer' [hereinafter 'said AO' for the sake of convenience and clarity] issued a notice alleging default being notice dated 15.11.2021 *inter alia* under Section 46 of C-GST Act for non-filing of returns GSTR-3B and not meeting the tax liability; that reply was sought within 15 days but writ petitioner - assessee admittedly, did not send any reply; that the said AO thereafter resorted to Best Judgment assessment and made an order dated 13.12.2021 *ex parte* for the period from March 2020 to December 2020 (10 months); that this order of said AO was carried in appeal by writ petitioner - assessee under Section 107 of C-GST Act to the Appellate Authority (first respondent in the captioned writ petition); that the first respondent - Appellate Authority afforded an opportunity of being heard to writ petitioner - assessee as per sub-section (8) of Section 107 of C-GST Act and made an 'order dated 30.08.2022 in Order-in-Appeal No.299 of 2022' [hereinafter 'impugned order' for the sake of convenience and clarity]; that there is a statutory appeal remedy



W.P.No.32740 of 2022

WEB COPY *inter alia* under Section 112 of C-GST Act read with Section 110 of C-

GST Rules but there is no dispute that the Tribunal has not been constituted and therefore, alternative remedy as of today, is unavailable; that the captioned writ petition has been filed assailing the impugned order made by the first respondent.

6. Learned counsel for writ petitioner - assessee assailed the impugned order primarily on the ground that the returns could not be filed for the aforementioned ten months period (March 2020 to December 2020) which shall hereinafter be referred to as 'said period' owing to Corona virus pandemic and consequent lock down, which is collectively referred to as 'COVID 19 situation' and none could neither portend nor presage the same is his further say. Learned counsel submitted that the other reason for the writ petitioner's inability qua filing returns was registration of writ petitioner - assessee had been revoked.

7. Adverting to the impugned order of the first respondent - Appellate Authority, learned counsel submitted that Appellate Authority



W.P.No.32740 of 2022

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has taken note of this submissions but has ultimately negated the appeal primarily on the ground that the returns were filed belatedly i.e., not within the prescribed time.

8. Learned Revenue counsel accepted notice, defended the impugned order and submitted that the Appellate Authority can also go into facts, Appellate Authority has in fact gone into the facts and sustained the Best Judgment Method that has been resorted to by jurisdictional AO.

9. It may not be necessary to be detained by rival submissions or by the facts any further in the light of paragraph No.5.10 of impugned order which reads as follows:

*'5.10. The appellant themselves have admitted that they had come under the adverse notice of the Headquarters Preventive Unit of Chennai South Commissionerate, resulting in verification of their accounts and records and investigation for plausible evasion of tax. Consequent to their visit, the appellant had worked out the tax liability for the period from March, 2020 to December, 2020. However, they filed their GSTR 1 and GSTR 3B Returns for the said period only on 12.04.2022 i.e., much after the lapse of time from passing the*



W.P.No.32740 of 2022

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10. The case of the writ petitioner - assessee is he could not file returns owing to certain circumstances which the assessee could neither portend nor presage. The Appellate Authority having noticed this submission has negated the appeal for filing of returns belatedly on 12.04.2022 without saying reason for delay is unacceptable and without giving reasons as to why and how it is not acceptable. To be noted, the pivoted question is whether the assessee was justified in non-filing of returns within time. In this regard, it is to be noticed that learned Revenue counsel very vehemently submitted and pointed out that revocation of registration itself was a consequence of non-filing of returns and therefore, the assessee's argument is a vicious cycle of sorts. The Appellate Authority should have given some dispositive reasoning on this aspect of the matter. The Appellate Authority should have gone into the reasons adduced by the writ petitioner - assessee regarding the belated filing of returns and should have returned a finding one way or the other. Absent the legal drill of returning such a finding, negating the appeal on the ground of belated filing of returns, in the considered view of this Court



W.P.No.32740 of 2022

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tantamounts to begging the question. Therefore, on this limited or short point, this Court is inclined to interfere with the order of Appellate Authority. However, the Appellate Authority also is an authority which can go into facts as rightly pointed out by the learned Revenue counsel. Therefore, this Court deems it appropriate to set aside the impugned order and remit the matter back to Appellate Authority with a further directive to examine the matter on merits based on available records and based on opportunity already given to the writ petitioner - assessee under sub-section (8) of Section 107 of C-GST Act. This means that the Appellate Authority need not give opportunity of being heard to the writ petitioner - assessee again as the same has already been given, it is the discretion of the Appellate Authority. All that the Appellate Authority has to do is to articulate the dispositive reasoning qua aforesaid aspect of the matter. It is open to the Appellate Authority to articulate other reasons i.e., dispositive reasoning of other facets of the matter.

11. The above exercise shall be completed by the Appellate Authority as expeditiously as the official business of the first respondent -





W.P.No.32740 of 2022

WEB COM

Appellate Authority would permit and in any event within a period of three weeks from today i.e., on or before 27.12.2022. The order shall be communicated to the writ petitioner in usual manner / mode that is being adopted but in any event within five working days from the date of disposal under due acknowledgment. For clarity and specificity, it is set out that the impugned order being order dated 30.08.2022 in Order-in-Appeal No.299 of 2022 made by the first respondent - Appellate Authority is set aside and the matter is remanded back to the first respondent - Appellate Authority for fresh disposal in the aforesaid manner within a time of three weeks from today. Though obvious it is also made clear that this Court has not expressed any view or opinion on the merits of the matter and all the questions are left open to the first respondent - Appellate Authority to consider on merits and in accordance with law.

**M.SUNDAR,J.**

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12. The captioned Writ Petition is ordered on above terms. Consequently, captioned WMP is closed. There shall be no order as to costs.



W.P.No.32740 of 2022

WEB COPY

06.12.2022

Speaking/Non-speaking order  
Index: Yes/No  
Internet : Yes/No

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To

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