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CASE DETAILS			
PRIMARY DETAILS			
Main Number	**WP 2471/2023**	**SR Number**	**WPSR 3533/2023**
Petitioner	**M/s. Southern Enterprises,**	**Respondent**	**Appellate Joint Commissioner ST**
Petitioner Advocate	**M NAGA DEEPAK**	Respondent Advocate	**GP FOR COMMERCIAL TAX**
Case Category	**NON-SERVICE**	District	**HYDERABAD**
Filing Date	**30/01/2023**	Registration Date	**30/01/2023**
Listing Date	**31/01/2023**	Case Status	**DISPOSED Click here to see the Order**
Disposal Date	**31-01-2023**	**Diposal Type**	**DISPOSED OF NO COSTS**
Purpose	**FOR ADMISSION**	Scrutiny Officer name	**KGK**
Hon'ble Judges	**THE HONOURABLE THE CHIEF JUSTICE UJJAL BHUYAN,THE HONOURABLE SRI JUSTICE N.TUKARAMJI**		

ORDERS

Order on	Judge Name	Date of Orders	Order Type	Order Details

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

W.P.No.2471 of 2023

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

Heard Mr. M.Naga Deepak, learned counsel for the petitioner and Mr. L.Venkateshwar Rao, learned Standing Counsel, Commercial Tax representing the respondents.

2. Petitioner is a proprietorship firm engaged in the business of sale and offering service of air conditioners. Following introduction of Goods and Services Tax (GST) regime, petitioner got itself registered under the Central Goods and Services Tax Act, 2017 (briefly 'the Act' hereinafter) *vide* GSTIN 36CNEPM0349F2Z4.

3. A show cause notice dated 09.11.2020 was issued by respondent No.4 to the petitioner to show cause as to why petitioner's GST registration should not be cancelled for non-filing of GST returns for a continuous period of six months. It appears that in response to the aforesaid show cause notice dated 09.11.2020, petitioner had submitted reply dated 19.11.2020. However, reply of the petitioner was found to

be not satisfactory whereafter, order dated 10.12.2020 was passed by respondent No.4 cancelling the GST registration of the petitioner.

4. Aggrieved by the same, petitioner preferred appeal before respondent No.1 under Section 107 of the Act. However, on the ground that the appeal was filed not only beyond the period of limitation but also beyond the extended period of limitation, the same was dismissed by respondent No.1 *vide* the order dated 11.01.2023.

5. Since no Tribunal has been constituted in the State of Telangana in terms of Section 112 of the Act, the present writ petition has been filed.

6. 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 under

[1] 2022(7) TMI 82

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 respondent No.2 to reconsider the case of the 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 statue.

7. Thus, following the above decision, we set aside the order dated 10.12.2020 passed by respondent No.4 as well as the order dated 11.01.2023 passed by respondent No.1 and remand the matter back to respondent No.4 for a fresh decision in accordance with law. Respondent No.4 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.

8. This disposes of the writ petition. No costs.

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

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 31.01.2023
LUR