

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION No.15344 OF 2022 (T-RES)

BETWEEN:

M/S G.G. AGENCIES
GIRIJESHWAR RICE MILL
HONNALI MAIN ROAD
CHILUR, HONNALI (TALUK)
DAVANAGERE DISTRICT
KARNATAKA 577230
(REP. BY SHRI. GANGADHARA SETTY
DORESHBABU, PROPRIETOR
AGED ABOUT 45 YEARS
S/O LT SHRI B C GANGADHARA SETTY)

...PETITIONER

(BY SRI. DAKSHINA MURTHY.R., ADVOCATE FOR
SMT. M. MAHALAKSHMI, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
FINANCE DEPARTMENT (REP BY ITS SECRETARY)
VIDHANA SOUDHA, DR AMBEDKAR VEEDHI
BENGALURU 560 001.
- 2 . THE JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS), DAVANAGERE DIVISON
VANIJYA THERIGE BHAVAN
1ST FLOOR, DEVARAJ URS LAYOUT
'A' BLOCK , P.B ROAD
DAVANAGERE 577 006.
- 3 . THE COMMERCIAL TAX OFFICER (ENFORCEMENT 4)
OFFICE OF THE COMMERCIAL TAX OFFICER
(ENFORCEMENT-4) 100 FT ROAD
DEVARAJA URS EXTENSION
DAVANAGERE 577 001.

...RESPONDENTS

(BY SRI. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER IN T.NO.300/2022-23 DTD 19.2.2022 IN ANNEXURE-L PASSED BY THE R2 AS BEING ILLEGAL AND UNTENABLE IN LAW IN THE FACTS AND CIRCUMSTANCES OF THE INSTANT CASE.

THIS W.P. COMING ON FOR *ORDERS*, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

In this petition, petitioner has sought for the following reliefs:

- a) *Issue a writ of certiorari or such other writ, order or direction as this Hon'ble Court may deem fit, by quashing the Order in T.No.300/2022-23 dated 19.2.2022 in Annexure L passed by the respondent No.2 as being illegal and untenable in law, in the facts and circumstances of the instant case;*
- b) *Issue a writ of mandamus or such other writ, order or direction as this Hon'ble Court may deem fit, directing the respondent No.2 to restore the appeal and hear it on merits in accordance with law;*
- c) *Refund the taxes and penalty already paid by the petitioner;*
- d) *Pass such other suitable orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, including cost in the interest of equity and justice.*

2. Heard learned counsel for the petitioner and learned AGA for the respondents and perused the material on record.

3. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioner submits that aggrieved by the order dated 02.02.2019 passed by the respondent No.3 / CTO, the petitioner preferred an appeal on 30.03.2019 within the prescribed period as provided under Section 107 of the KGST / CGST Act. It is the grievance of the petitioner that though the said appeal had been filed electronically by the petitioner on 30.03.2019 itself within the prescribed period as evidenced by the acknowledgment in this regard produced as Annexure – J and intimating the respondent No.2 / Appellate Authority about the same vide letter dated 12.10.2021, which was served upon the Appellate Authority on 16.10.2021, the respondent No.2 has proceeded to dismiss the appeal on the main ground that the appeal was barred by limitation by assigning wholly invalid reasons and

consequently, the impugned order deserves to be quashed. It is also contended that the respondent No.2 / Appellate Authority has passed the impugned order without providing any opportunity to the petitioner and as such, the impugned order is violative of principles of natural justice and the same deserves to be quashed on this ground also.

4. Per contra, learned counsel for the respondents submits that there is no merit in the petition and that the same is liable to be dismissed.

5. As rightly contended by the learned counsel for the petitioner, a perusal of the memorandum of appeal along with the provisional acknowledgment produced by the petitioner as Annexure – J as well as the letter at Annexure -- K dated 12.10.2021 written by the petitioner to the respondent No.2 / Appellate Authority will clearly indicate that the petitioner had preferred an appeal on 30.03.2019 itself within the prescribed period from the date of the impugned order dated 02.02.2019. The order impugned in the present petition has been passed without considering or appreciating the said aspects and by

proceeding on the erroneous premise that the appeal was filed by the petitioner beyond the period of limitation which is factually incorrect and contrary to the material on record warranting interference by this Court in the present petition particularly when neither sufficient nor reasonable opportunity was provided by the respondent No.2 / Appellate Authority before passing the impugned order which is violative of principles of natural justice also and deserves to be quashed and the matter remitted back to respondent No.2 / Appellate Authority for reconsideration afresh in accordance with law.

6. In this regard, as held by the High Courts of Andhra Pradesh and Orissa, in ***Shree Jagannath Traders Vs. Commr. of State Tax Odisha, Cuttak – 2022 (58) G.S.T.L. 160 (Ori.); M/s. Atlas PVC Pipes Ltd. Vs. State of Odisha and others – 2022-TIOL-957-HC-Orissa-GST; Sri. Lakshmi Venkateshwara General Merchants and Commission Agents Vs. State of Andhra Pradesh – 2021 (51) G.S.T.L.8 (A.P.); Sri. Siddhi Kalko Bhagavan Stone Crusher Vs. Assistant Commissioner of Service***

Tax, Vizianagaram – 2020 (42) G.S.T.L.328 (A.P.) and Ali Cotton Mill Vs. Appellate Joint Commissioner (ST) -- 2022 (56) G.S.T.L. 270 (A.P.) so long as the appeal was preferred electronically within the prescribed period, merely because the certified copy was subsequently filed physically by the petitioner / assessee, the said circumstance cannot be made the basis to come to the conclusion that the appeal was filed beyond the prescribed period; in the instant case as stated supra, the petitioner had preferred the appeal electronically on 30.03.2019, within the prescribed period and as such, the findings recorded by the respondent No.2 / Appellate Authority that the appeal preferred by the petitioner was barred by limitation deserve to be set aside.

7. In the result, I pass the following:

ORDER

- (i) Petition is hereby ***allowed***.
- (ii) The impugned order at Annexure – L dated 19.02.2022 passed by respondent No.2 is hereby set aside.

- (iii) Matter is remitted back to respondent No.2 / Appellate Authority for reconsideration afresh on all aspects of the matter, in accordance with law, excluding the aspect of limitation in preferring the appeal by the petitioner, which stands concluded in favour of the petitioner by virtue of this order.
- (iv) All rival contentions on all aspects except the aspect of limitation as stated supra, are kept open and no opinion is expressed on the same.

**Sd/-
JUDGE**

SV