IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 28TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

WRIT PETITION NO.200569 OF 2025 (T-RES)

BETWEEN:

M/S MAHILA GRAHAKAR SAHAKAR SANGH NIYAMIT,
10-934/83, MAHALAXMI NAGAR,
BRAHMPUR, KALABURAGI-585103,

REPRESENTED BY ITS SECRETARY,
MALLANNA S/O SHARANAPPA DESHAPANDE,
AGE: 63 YEARS, OCC: SECRETARY OF
M/S MAHILA GRAHAKAR SAHAKAR SANGH NIYAMIT,

…PETITIONER

(BY SRI AVINASH A. UPLAONKAR, ADVOCATE)

Digitally signed by RENUKA
Location: High Court Of Karnataka

AND:

1. THE JOINT COMMISSIONER
   OF GOODS AND SERVICE TAX (APPEALS),
   KALABURAGI-585102.

2. COMMERCIAL TAX OFFICER,
   OFFICE OF THE ASSISTANT COMMISSIONER OF
   COMMERCIAL TAXES, LGSTO-520,
   NEAR RAILWAY STATION,
   KALABURAGI-585102.

…RESPONDENTS

(BY SRI MALLIKARJUN SAHUKAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER, SET ASIDE THE ORDER DATED 07.02.2025 IN FILE BEARING GST:AP:447/2023-24/1269/1 ORDER DATED 07.02.2025 ORDER PASSED BY THE RESPONDENT VIDE ANNEXURE-A.

THIS PETITION, COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE R.NATARAJ

ORAL ORDER

The petitioner has challenged an order dated 07.02.2025 passed by respondent No.1 in case No.GST:AP:447/2023-24/1269/1.

2. The petitioner contends that it is registered as a dealer under the Karnataka Goods and Services Tax Act, 2017 (for short, 'the KGST Act, 2017'). The Assessing Officer passed an order of assessment for the tax period from 01.04.2019 to 31.03.2020 under Section 73(9) of the KGST Act, 2017 on 23.07.2024. The petitioner contends

that the Assessing Officer did not consider the exemption turnover, which was more than 90% of the total turnover. The petitioner also contends that the Assessing Officer had calculated tax on the total turnover at 12%. The secretary of the petitioner allegedly suffered an accident and was bedridden for 25 days and was discharged on 12.07.2024. Therefore, he could not collect the books of accounts and file an appeal challenging the order passed by the Assessing Officer. The petitioner contends that belated appeal was thereafter filed along with an application for condonation of delay. However, the Appellate Authority namely, responded No.1 herein rejected the appeal on the ground that the appeal was not filed within three months as prescribed under Section 107 (1) of the KGST (CGST) Act, 2017. Being aggrieved by the said order, the petitioner is before this Court.

3. Learned counsel for the petitioner contends that the petitioner is entitled to seek for condonation of delay by explaining the reason for not filing the appeal in time.

He submits that Section 5 of the Limitation Act, 1963 (for short, 'the Act, 1963') is applicable to an appeal filed by the petitioner. In support of his contentions, he relied upon the judgment of the High Court of Calcutta in ***Arvind Gupta Vs. Assistant Commissioner of Revenue State Taxes, Cooch Behar Charge and Others***[1].

4. Learned Additional Government Advocate though contended that the petitioner was bound to file an appeal within the time prescribed, did not dispute the fact that the Calcutta High Court in similar circumstances had held that Section 5 of the Act, 1963 was applicable to an appeal filed against an order passed by the Assessing Authority.

5. In view of the aforesaid and in view of the fact that the secretary of the petitioner had suffered an accident and was hospitalized, the petitioner was entitled to seek condonation of delay. Hence, the following:

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[1] WPA/2904/2023

ORDER

(i) The writ petition is ***allowed***.

(ii) The impugned order passed by respondent No.1 in No.GST:AP:447/2023-24/1269/1 is set aside.

(iii) The matter is remitted back to respondent No.1, who shall consider the application filed by the petitioner on merits and in accordance with law.

Sd/-
(R.NATARAJ)
JUDGE

RSP
LIST NO.: 1 SL NO.: 29
CT:SI