

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9th DAY OF NOVEMBER, 2022

BEFORE

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

WRIT PETITION No.21269/2022 (T-RES)

BETWEEN:

SRI. KOLAPUDI ENOCH WASHINGTON
PROPRIETOR OF M/S INXL DIGITAL
SON OF LATE DR. K.DEVADANAM
AGED ABOUT 53 YEARS,
RESIDING AT 3RD FLOOR,
FLAT No.304, D.NO.108/15
ELEGANT PRISTINE, 2ND STAGE
HRBR LAYOUT, BENGALURU- 560 043.

...PETITIONER

(BY SRI.VINAY S., ADVOCATE)

AND:

- 1 . THE ADDITIONAL COMMISSIONER
(GST AND CENTRAL TAX)
OFFICE OF THE COMMISSIONER (APPEALS -I)
GST AND CENTRAL TAX, 7TH FLOOR
GST BHAVAN, LB STADIUM ROAD
TRAFFIC TRANSIT MANAGEMENT CENTRE
BMTC BUILDING, 4TH FLOOR
ABOVE BMTC BUS STAND, DOMLUR
OLD AIRPORT ROAD, BENGALURU- 560 071
- 2 . THE SUPERINTENDENT OF CENTRAL TAX
RANGE -B, EAST DIVISION -4
GST EAST COMMISSIONERATE
BENGALURU -560 071

....RESPONDENTS

(BY SRI.JEEVAN J.NEERALGI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DTD. 06.10.2022 BEARING ORDER IN APPEAL NO. 178/ADC-AI/GST/2022 PASSED BY RESPONDENT NO.1 IN APPEAL NO. 262/2022 GST ADC A-I (GST APPEALS) (ANNX-A) AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

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

- (i) *Set aside the order dated 06.10.2022 bearing Order-in-Appeal No.178/ADC-A1/ GST/2022 passed by Respondent No.1 in Appeal No.262/2022 GST ADC A-I (GST Appeals) (Annexure-A).*
- (ii) *Allow the appeal dated: 16.08.2022 (Annexure-F) filed by the Petitioner in Appeal No.262/2022 GST ADC A-1 (GST Appeals) as prayed for and condone the delay in filing the appeal.*
- (iii) *Set aside the order dated 15.03.2022 bearing Reference No. ZA290322046311Y passed by Respondent No.2 (Annexure-E) and restore GST registration of the Petitioner bearing No.29AAJPW2503M3Z5.*
- (iv) *Award costs of the proceedings.*
- (v) *Grant such other order(s) as this Hon'ble Court deems fit under the facts and circumstances of the case, in the interests of justice and equity.*

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

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned counsel for the petitioner submits that due to the untimely demise of his Auditor, he could not make GST payments on time leading to the show cause notice dated 24.02.2022 being issued by the respondents to the petitioner, who did not receive the same, since his e-mail account has spam filter, due to which, the petitioner was not aware of the show cause notice and did not submit his reply resulting in the respondent No.2 canceling the GST registration of the petitioner. It is also submitted that due to the aforesaid reasons, petitioner also could not attend the personal hearing nor respond to the notice issued by the respondents.

3.1 Learned counsel further submits that aggrieved by the aforesaid order dated 15.03.2022 at Annexure-E, petitioner preferred an appeal before the 1st respondent – appellate authority. In the appeal, petitioner specifically

contended that the delay on the part of the petitioner to prefer the appeal was on account of the fact that the petitioner was not aware of the show cause notice or the proceedings nor the impugned order and as such, the delay in preferring the appeal deserves to be condoned by the 1st respondent – appellate authority. By the impugned order dated 06.10.2022 at Annexure-A, the 1st respondent – appellate authority dismissed the appeal refusing to condone the delay in preferring the appeal by the petitioner on the ground that he does not have jurisdiction to condone the delay beyond the prescribed period and the condonable period as stipulated in Section 107 of the CGST Act. Aggrieved by the impugned orders, the petitioner is before this Court by way of the present petition. It is contended that though it may not be permissible for the 1st respondent to condone the delay in preferring the appeal, this Court can condone the delay exercising its powers under Article 226 of the Constitution of India as held by this Court in the following decisions:-

***(i) Practice Strategic Communications vs.
The Commissioner of Service Tax – ILR 2016
KAR 4493;***

**(ii) Simplex Infrastructure Limited vs.
Joint Commissioner of Central Tax –
W.A.No.942/2021 dated 03.12.2021 and**

**(iii) M/s.Himalaya Drug Company vs.
Commissioner of Central Tax –
W.P.No.10142/2021 dated 08.09.2022.**

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

5. As rightly contended by the learned counsel for the petitioner, though the 1st respondent – appellate authority does not have any power to condone the delay in preferring an appeal under Section 107 of the CGST Act, in a given case, it is open for this Court to condone the delay by exercising its powers under Article 226 of the Constitution of India. In the instant case, it is the specific assertion of the petitioner that due to untimely demise of his Auditor and on account of bonafide reasons, unavoidable circumstances and sufficient cause, it was not possible for him to not only file the GST returns and make payment within the stipulated time but also could not prefer the

appeal within the prescribed period. In my considered opinion, the explanation offered by the petitioner in not making GST payment, filing returns and preferring an appeal deserves to be accepted and by adopting a justice oriented approach, I deem it just and appropriate to set aside the impugned orders and direct the 2nd respondent to restore the GST registration of the petitioner, subject to payment of all dues by the petitioner.

6. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure-A dated 06.10.2022 passed by the 1st respondent is hereby set aside.

(iii) The impugned order at Annexure-E dated 15.03.2022 passed by the 2nd respondent is hereby set aside.

(iv) The 2nd respondent is hereby directed to restore the GST registration in favour of the petitioner forthwith without any delay.

(v) The petitioner is also permitted to file GST returns which shall be allowed by the respondents, subject to the petitioner paying all outstanding dues to the respondents, who shall proceed further in accordance with law.

**Sd/-
JUDGE**

RK/SRL.