



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 11<sup>TH</sup> DAY OF FEBRUARY, 2025**

**BEFORE**

**THE HON'BLE MR JUSTICE S.G.PANDIT**

**WRIT PETITION NO. 3841 OF 2025 (T-RES)**

**BETWEEN:**

S K TAKAPPA S/O KALAPPA,  
AGED 74 YEARS,  
PROP: M/S S.K. TAKAPPA COIR ROPES DEALER,  
#323-5E, OLD HOSPITAL ROAD,  
DAVANGERE-577001.

...PETITIONER

(BY SRI. K M SHIVAYOGISWAMY, ADV.)

**AND:**

1. THE ASSISTANT COMMISSIONER  
OF COMMERCIAL TAXES (APPEALS)  
VANIJYA THERIGE BHAVANA,  
D. DEVARAJ URS LAYOUT,  
DAVANGERE-577004.
2. THE JOINT COMMISSIONER  
OF COMMERCIAL TAXES (APPEALS)  
DAVANGERE DIVISION,  
VANIJYA THERIGE BHAVANA,  
D. DEVARAJ URS LAYOUT,  
DAVANGERE-577004.

...RESPONDENTS

(BY SRI. K HEMAKUMAR, AGA)

THIS PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE 2<sup>ND</sup> RESPONDENT BEARING APPEAL NO. KGST/AP.NO.209/2023-24 DATED 08.10.2024 VIDE ANNEXURE-E; QUASH THE CONSEQUENTIAL RECTIFICATION ORDER PASSED BY THE 2<sup>ND</sup> RESPONDENT BEARING APPEAL NO.KGST/AP-209/2023-24 DATED 13.01.2025 VIDE ANNEXURE-H AND ETC.





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

CORAM: HON'BLE MR JUSTICE S.G.PANDIT

**ORAL ORDER**

Learned Additional Government Advocate

Sri.K.Hemakumar accepts notice for respondents.

2. The petitioner, registered dealer under the provisions of CGST/SGST Act, 2017 (for short, '2017 Act') is before this Court under Article 226 of the Constitution of India questioning the order passed by second respondent in Appeal No.KGST/AP.No.209/2023-24 dated 08.10.2024 and also consequential rectification order in Appeal No.KGST/AP-209/2023-24 dated 13.01.2025 with a prayer to direct respondent No.2 to admit the appeal dated 22.03.2024 and to hear on merits.

3. Heard learned counsel Sri.K.M.Shivayogiswamy for petitioner and learned Additional Government Advocate Sri.K.Hemakumar for respondents. Perused the writ petition papers.



4. Learned counsel for the petitioner would submit that against order dated 20.12.2023 passed under Section 73(9) and 73(10) of 2017 Act which was communicated to the petitioner under Annexure-C, e-mail dated 22.12.2023, filed appeal before the second respondent on 22.03.2024. It is contended that the appeal was filed on the 90<sup>th</sup> day and it was within the time in terms of Section 107 of 2017 Act. Learned counsel would submit that the second respondent without examining as to whether the appeal filed was within the time and without providing an opportunity of hearing, dismissed the appeal solely on the ground of delay of two days in filing the appeal. Learned counsel would further submit that subsequently, petitioner filed rectification application and along with rectification application, petitioner had also filed affidavit praying to condone the delay if any, in preferring the appeal. Learned counsel would further submit that the rectification application also came to be dismissed by order dated 13.01.2025 (Annexure-H). Learned counsel would submit that the order passed by the second respondent is without



application of mind and without affording any opportunity. Learned counsel would further submit that since the appeal filed was within 90 days from the date of receipt of impugned order, the respondent No.2 was under legal obligation to hear the appeal on merits.

5. Per contra, learned Additional Government Advocate Sri.K.Hemakumar would submit that the order is dated 20.12.2023 and on the same day, the order would be uploaded on the portal which the petitioner has failed to verify.

6. Having heard the learned counsel appearing for the parties and on perusal of the entire writ petition papers, I am of the view that second respondent ought to have exercised its power under Section 107 (1) and (2) of 2017 Act judiciously and ought to have entertained the appeal and passed order on merits.

7. Admittedly, order under appeal was passed on 20.12.2023 which was communicated to the petitioner



through e-mail on 22.12.2023. In terms of Section 169 of 2017 Act, one of the mode of communication is by e-mail. From the date of communication, appeal is filed on 90<sup>th</sup> day. Section 107 of KGST Act, 2017 provides three months time to file appeal from the date of order or from the date of communication.

8. Even otherwise, the petitioner had filed rectification application and along with rectification application, petitioner had also filed application along with affidavit, praying to condone the delay, if any in preferring the appeal. If such rectification application along with application for condonation of delay is filed, second respondent ought to have exercised its power under Section 107 (2) of 2017 Act, judiciously since the appeal was presented within the condonable period. The respondent No.2 failed to apply its mind judiciously and failed to take a decision in terms of Section 107(2) of 2017 Act. Moreover, if the second respondent-Appellate Authority was of the view that the appeal filed was beyond the period



prescribed under Section 107(1) of 2017 Act, second respondent-Appellate Authority ought to have heard petitioner before passing the order rejecting the appeal.

9. In the above circumstances, the following:

**ORDER**

- a) Annexure-E, order bearing Appeal No.KGST/AP.No.209/2023-24 dated 08.10.2024 as well as consequential rectification order dated 13.01.2025 bearing Appeal No.KGST/AP-209/202-24 (Annexure-H) are set aside.
- b) Second respondent is directed to hear the appeal filed by the petitioner at Annexure-D on merits since the appeal is filed on the 90<sup>th</sup> day from the date of communication by e-mail on merit and pass appropriate order in accordance with law.
- c) With the above, writ petition stands disposed of.

**Sd/-  
(S.G.PANDIT)  
JUDGE**

NC  
CT:bms  
List No.: 1 Sl No.: 28