

Court No. - 1

Case :- WRIT TAX No. - 1155 of 2023

Petitioner :- M/S Enkay Polymers

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Praveen Kumar

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Praveen Kumar, learned counsel appearing on behalf of the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated July 03, 2023 passed by the respondent No.2/Additional Commissioner, Grade-2 (Appeal)-IV, State Tax Ghaziabad rejecting the appeal filed by the petitioner on the ground that the same were time barred, as the self-certified copy of the decision or order was not made available within time as per proviso to Rule 108 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules").

3. Learned counsel appearing on behalf of the petitioner has referred to Rule 108 of the Rules to indicate that when the appeal is filed electronically and uploaded on the common portal in FORM GST APL-01, there is no requirement to file self-certified copy of the decision. Both the proviso to Rule 108 of the Rules apply only in the case when the appeal is not uploaded on common portal. Rule 108 of the Rules is delineated below for clarification:

*"108. Appeal to the Appellate Authority.- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01**, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.*

*(2) The grounds of appeal and the form of verification as contained in **FORM GST APL- 01** shall be signed in the manner specified in rule 26.*

*(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number shall be issued in **FORM GST APL-02** by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:*

Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:

Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal."

4. Various High Courts have held that when an assessee files a memo of appeal in the GST Portal, non submission of certified copy would be treated as mere technical defect and the appeal should not be dismissed on the sole ground of non submission of certified copy within time. The Orissa High Court in the case of Atlas PVC Pipes Ltd. vs. State of Odisha reported in 2022 (65) G.S.T.L. 45 (Ori.) held as follows:-

"6.13 On the altar of default in compliance of such a procedural requirement, merit of the matter in appeal should not have been sacrificed. Since the petitioner has enclosed the copy of impugned order as made available to it in the GST portal while filing Memo of Appeal, non-submission of certified copy, as has rightly been conceded by the Additional Standing Counsel appearing on behalf of CT&GST Organisation, is to be treated as mere technical defect."

5. Furthermore, the High Court of Madras in the case of PKV Agencies vs. Appellate Dy. Commissioner (GST) (Appeals), Vellore reported in 2023 (73) G.S.T.L. 71 (Mad.) held as follows:-

"5. In the aforesaid decision of the Orissa High Court also, the petitioner assessee had filed an appal under Section 107 of the Odisha Goods and Services Tax Act, 2017, electronically on time, but did not furnish a certified copy of the impugned order, within seven days of filing of the appeal as prescribed under the proviso to Rule 108(3) of the OGST Rules. After giving due consideration to all the relevant provisions of the OGST Act/Rules, the Orissa High Court has held that since Rule 108(3) has not prescribed for condonation of delay in the event where the petitioner fails to submit the certified copy of the order impugned in the appeal nor is there any provision restricting application of Section 5 of the Limitation Act, 1963, in the context of supply of certified copy within the period stipulated in sub-rule (3) of Rule 108, the requirement to furnish certified copy of the impugned order within seven days of filing of appeal is only a procedural requirement, which can be condoned by exercising powers under Article 226 of the Constitution of India as it is only a technical defect."

6. Keeping in mind the judgments passed by these High Courts and upon examination of Section 107 of the Central Goods and

Services Tax Act, 2017 read with Rule 108 of the Central Goods and Service Tax Rules, 2017, I am of the view that mere non filing of the certified copy of the decision within a period of seven days, when the appeal has been filed electronically within the time frame prescribed, that is, three months, the authority should not dismiss the appeal on the ground that the certified copy of the decision was not filed within time.

7. In light of the above, the impugned order dated July 03, 2023 is quashed and set aside with a direction upon the appellate authority to *de novo* hear the appeals filed by the petitioner and pass a reasoned order on merits within a period of three months from date.

8. With the aforesaid directions, the writ petition is allowed.

Order Date :- 16.5.2024

Rakesh

(Shekhar B. Saraf, J.)