

**Court No. - 10**

**Case :-** WRIT TAX No. - 1826 of 2025

**Petitioner :-** M/S Kishan Chand And Co

**Respondent :-** Additional Commissioner Grade-Ii Appeal-Ist State Tax Judicial Division And Another

**Counsel for Petitioner :-** Anshul Kumar Singhal

**Counsel for Respondent :-** C.S.C.

**Hon'ble Piyush Agrawal,J.**

1. Heard Shri Anshul Kumar Singhal, learned counsel for the petitioner and Shri Ravi Shankar Pandey, learned ACSC for the State - respondents.

2. With the consent of learned counsel for the parties, this writ petition is being finally disposed of at this stage without calling for a counter affidavit.

3. The instant writ petition has been filed against the impugned order dated 06.07.2021 passed by the Deputy Commissioner, State Tax, Hapur as well as the impugned order dated 24.12.2024 passed by the Additional Commissioner, Grade - 2 (Appeal), State Tax, Ghaziabad.

4. Learned counsel for the petitioner submits that the petitioner is a Proprietorship firm. For the financial year 2017-18, during December, 2019 to January, 2020, the petitioner made purchases from various registered firms, with regards to which GSTR 3-B, GSTR - 1, etc. were filed showing earned of ITC, which was also reflected in the books of account. He further submits that a notice was issued to the petitioner under section 73 of the GST Act intimating discrepancies in returns GSTR - 3-B, GSTR-9, GSTR-1 and GSTR-2A. Thereafter, the respondent no. 2 passed the impugned order dated 06.07.2021. Aggrieved by the said order, the petitioner preferred an appeal on 18.08.2021 through e-mode, which has been dismissed vide impugned order dated 24.12.2024 on the ground of laches that the certified copy of the impugned order was not filed as per rule 108 of the Rules framed under the GST Act.

5. Learned counsel for the petitioner further submits that against the order dated 06.07.2021, an appeal was, admittedly, preferred through e-mode along with all requisite documents. The said fact has been mentioned in paragraph no. 10 of the writ petition. He further submits that thereafter, rule 108 of the Rules was amended on 26.12.2022, which contemplates for submitting a certified copy of the order within 7 days. He further submits that as per the rule, the condition for filing a self-certified copy was required to be made in the event the copy of the order is not filed along with the memo of appeal. In support of his submissions, he has placed reliance on the judgement of the Delhi High Court in **Chegg India Private Limited Vs. Union of India & Others** [W.P. (C) No. 1062/2024 & CM Appl. 4433/2024, decided on 20.12.2024].

6. He further submits that since the amendment made in rule 108 of the Rules is procedural in nature, therefore, the same will apply retrospectively, unless a

contrary intention is mentioned in the amendment. In support of the said submission, he has placed reliance on the judgement of this Court in **Deepu & 4 Others Vs. State of U.P. & 4 Others** [Criminal Misc. Writ Petition No. 12287/2024, decided on 06.08.2024].

7. Per contra, learned ACSC supports the impugned orders and submits that prior to the amendment, the petitioner was required to submit the certified copy of the order, which have been done by the petitioner after lapse of the period as mentioned in the Act/Rules and therefore, the impugned orders are justified. He further submits that as per rule 108 of the Rules, at the time of filing of appeal, the same was not complied with and therefore, the subsequent amendment will not be of any help to the petitioner.

8. After hearing learned counsel for the parties, the Court has perused the record.

9. It is admitted that the appeal against the order dated 16.08.2022 passed by the Proper Officer was preferred on 15.11.2022. It is also not in dispute that along with the appeal, copy of the order appealed against was also filed. The said fact has specifically been mentioned in paragraph no. 22 of the writ petition, which has not been denied by the State in paragraph no. 11 of the counter affidavit. During the pendency of the appeal, subsequent amendment to rule 108 came on 16.12.2022.

10. For considering the controversy in hand, the unamended and amended rule 108 (3) of the GST Rules, 2017 would be relevant, which are as follows:-

**Unamended Rule 108 (3):**

*"(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in Form G.S.T. A.P.L. - 02 by the Appellate Authority or an officer authorized by him in this behalf;*

*Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM G.S.T. A.P.L. - 01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.*

*Explanation: For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.*

**Amended Rule 108 (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 authorized 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.*

11. As per the unamended rule 108 (3) of the Rules, the time of filing certified copy of the order appealed against was within 7 days of submission of appeal; whereas, as per the amended rule 108(3) of the Rules, where the decision and order against is not uploaded on the common portal, then the party shall submit certified copy of the said decision within 7 days.

12. Bare conjoint reading of the aforesaid provisions clearly shows that in the event certified copy of the order appealed against is not uploaded along with the appeal through e-mode, then within 7 days of filing of the appeal, a self-certified copy of the order was supposed to be filed within 7 days.

13. The issue in hand has already been decided by the ***Delhi High Court in Chegg India Private Limited*** (supra); wherein, the Court has held as under:-

*"7. Rule 108 was initially enacted as part of the CGST Rules, 2017 and the same was amended with effect from 26th December, 2022. Both the pre and post amendment rule are relevant and are set out below:*

#### *Provision Pre-amendment*

*"Rule 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) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf:*

*Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy. Explanation.- For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued".*

#### *Provision Post-amendment*

*"Rule 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 acknowledgment, 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 acknowledgment 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 acknowledgment, 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 acknowledgment 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".

8. As per pre-amended Rule 108 of CGST Rules, the appeal could be filed either electronically or otherwise. Upon filing of the appeal, along with relevant documents, provisional acknowledgement was to be issued. Thereafter, under Rule 108(3) of CGST Rules, certified copy of the decision could be filed within seven days of the filing of the appeal, upon which the final acknowledgement indicating the appeal no. would be issued for all practical purposes. However, subject to the condition that certified copy is filed within seven days, the date of issuance of provisional acknowledgement was the date of filing of the appeal. If the certified copy of the decision or order was filed after seven days, then the date of filing of the appeal would be the date of filing of the physical copy.

11. The question is whether the appeals were filed within the time period in terms of Rule 108 or not and if filed with a delay, does it merit condonation. In the present case, the date of online filing in respect of all orders except order-in-appeal No. 132 are within the statutory period which is prescribed i.e., within 4 months. The delay is in the physical filing.

13. The Ld. Orissa High Court in its judgement dated 29th June 2022 in M/s Atlas PVC Pipes Ltd. (supra) in a similar appeal, deciding in favour of the assessee observed as under:

"6.11. Investigating further into the instant matter, this Court finds that Rule 108(3) has not prescribed for condonation of delay in the event where the petitioner would fail to submit 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 period stipulated in sub-rule(3) *ibid*.

6.12. The requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as a procedural requirement.

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 the 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."

17. Based on the above judgements, the submission being made on behalf of the Petitioner is that the amendment dated 26th December 2022 which was made in Rule 108 shows that the said amendment was merely clarificatory in nature. It was merely clarifying the rule as it

existed and, therefore, the benefit of online filing along with the electronic copy of the decision ought to be considered as sufficiently within the limitation period. The Id. Counsel has also relied upon the observations made in *Hitachi (supra)* to argue that since the substitution was to merely provide clarity to the requirement of submission of the certified copy of the order which is a procedural requirement, the Appellant cannot be non-suited on the ground of limitation.

18. This Court had issued notice on 16th December, 2024 and Mr. Aditya Singla, Id. Counsel had accepted notice. He submitted on behalf of the Department that in this case clearly, the benefit of the amended rule ought not to be extended to the Petitioner as there was a clear delay in the filing of the physical certified copy of the order.

19. A perusal of the amended rule and the decisions which have been cited hereinabove make it clear that the condition to physically file the certified copy of the impugned decision/order is not mandatory. Therefore, an appeal filed prior to the amendment, where the certified copy was submitted with a delay, may be condoned if the online filing was completed within the prescribed limitation period. Ultimately, what is to be borne in mind is the fact that online filing was within limitation. There is no doubt being raised as to the genuineness of the copy of the order, which has been filed.

20. Under such circumstances, merely because the physical submission of the appeal and the order was much later, when the online filing was within the prescribed time, cannot deprive the Petitioner of hearing on merits. In most Courts and Tribunals, online filing and electronic filing is now prescribed mode and the Courts are moving towards technologically advance systems. It would be retrograde to opine that online filing, which was complete in all respects, including electronic copy of the order, is not valid filing."

14. The Delhi High Court, while considering the issue, which is identical to the issue in hand, has held that the condition for physically filing the certified copy is not mandatory, but procedural in nature. If an appeal is preferred along with all documents and the copy of the appeal, the filing of certified copy is not required.

15. Similarly, in the case in hand, it is not in dispute that the appeal, which was preferred on 18.08.2021, was without order appealed against. Once this fact is not in dispute, the issue in hand is covered by the judgement of the Delhi High Court in ***Chegg India Private Limited*** (supra).

16. In view of the aforesaid facts & circumstances of the case, as also the judgement in ***Chegg India Private Limited*** (supra), the impugned order dated 24.12.2024 passed by the Additional Commissioner, Grade - 2 (Appeal), State Tax, Ghaziabad cannot be sustained in the eyes of law. The same is hereby quashed.

17. The writ petition succeeds and is allowed.

18. The matter is remanded back to the appellate authority, i.e., the Additional Commissioner, Grade - 2 (Appeal), State Tax, Ghaziabad, for considering the appeal on merit.

**Order Date :-** 6.5.2025/Amit Mishra