

Court No. - 1

Case :- WRIT TAX No. - 83 of 2024

Petitioner :- Visible Alpha Solutions India Private Limited

Respondent :- Commissioner Cgst (Appeals)Noida And Another

Counsel for Petitioner :- Somnath Bhattacharya,Zafar Ahmad Khan

Counsel for Respondent :- Amit Mahajan

Hon'ble Shekhar B. Saraf,J.

1. By judgment and order dated February 12, 2024, this Court had allowed this writ petition setting aside the impugned order dated October 18, 2023 and directed the appellate authority to *de novo* hear the appeal filed by the petitioner and pass a reasoned order on merits within a period of three months.

2. Upon reconsideration of the order passed, this Court, *suo motu*, is of the view that paragraph 4 of the judgment and order dated February 12, 2024 is required to be substituted with the following paragraphs:-

“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.”

4(i). 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 appeal 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.”

4(ii) 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.”

3. Accordingly, paragraphs 4, 4(i) and 4(ii) of this order be read in place of paragraph 4 of the judgment and order dated February 12, 2024 and this order be treated as part and partial of the said judgment and order.

4. The Registrar Compliance of this Court is directed to communicate this order to the parties.

Order Date :- 12.3.2024

Rakesh

(Shekhar B. Saraf, J.)