

**Court No. - 2**

**Case :-** WRIT TAX No. - 1299 of 2024

**Petitioner :-** M/S Patel Beej Bhandar

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Ajay Kumar Yadav, Arti Singh

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

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

1. Heard learned counsel for the petitioner and Sri Ravi Shankar Pandey, learned Additional Chief Standing for the State-respondents.
2. By means of instant writ petition, the petitioner has assailed the order dated 27.03.2024 passed by Additional Commissioner- Grade-2, Etawah in contravention of Rule 108 of UPGST/CGST Rule.
3. Learned counsel for the petitioner submits that by the impugned order dated 27.03.2024, the appeal of the petitioner was rejected on the ground that the same was barred by limitation, as the self attested copy of the order was not made available within time fixed as per Rule 108 of UPGST/CGST Rule.
4. He further submits that the proper officer passed an order on 14.10.2022, against which an appeal was filed on 11.01.2023 along with the certified copy of the order dated 27.03.2024.
5. In support of his submission, he has placed reliance upon the Notification No.26 of 2022, dated 26.12.2022 and refers para no.13 which provides that where the order or decision appealed against is uploaded on the common portal, the appellant shall submit a self-attested copy of the said decision or order within seven days from the date of filing of Form GST APL-01 and a final acknowledgement has to be filed. He further submits that in the event of non-filing of the order, there is a requirement of submitting self certified copy, but in the case at hand, the order along with the appeal was uploaded, hence appeal has wrongly been dismissed.
6. In support of his submission, he has placed reliance upon the judgment of this Court passed in the case of ***Visible Alpha Solutions India Private Limited Vs. Commissioner, CGST Appeals, NOIDA and Another (Writ Tax No. 83 of 2024)***.
7. *Per contra*, learned Additional Chief Standing Counsel supports the impugned orders and submits that the petitioner has made violation of Section 108 of CGST/UPGST Act and therefore, the impugned order is justified.

8. After hearing the parties, the Court has perused the record.

9. The appeal has only been dismissed as being time barred as proviso of Rule 108 of CGST/UPGST Act has not been complied with because self-certified copy of the order has been filed beyond the period prescribed therein. The issue in the case at hand is no longer *res-integra*.

10. This Court in the case of **Visible Alpha Solutions India Private Limited (supra)** has set aside the order on the ground that appeal cannot be dismissed on the ground of limitation for non-filing of certified copy of the order. Relevant paragraphs are being quoted here-in-below:

*"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. Upon a perusal of the impugned order, it clearly appears that the appeal was electronically filed within the time permitted, that is, three months as per Section 107 of the Central Goods and Services Tax Act, 2017. Furthermore, the first and second proviso to Rule 108 of the Rules would not apply, as is clear from the literal

*interpretation of the first proviso itself.*

*5. In light of the above, the impugned order dated October 18, 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."*

6. The aforesaid order dated 12.02.2024 was modified on 12.03.2024, taking suo moto, whereof relevant paragraph are as under:-

*"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 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."*

*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."*

10. In view of the above facts as stated as well as law laid down in the aforesaid judgment, the impugned order cannot be sustained in the eyes of law and the same are hereby quashed.

11. Accordingly, the writ petition is **allowed**. The matter is remanded to the authority concerned for deciding afresh by passing a reasoned and speaking order, after hearing all the stakeholder, within a period of two months from the date of production of certified copy of this order.

**Order Date :- 11.9.2024**

Pravesh Mishra