



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV

WRIT PETITION NO. 14881 OF 2024 (T-RES)

BETWEEN:

1. M/S HITACHI ENERGY INDIA LIMITED
PLO NO.4A, 5 AND 6, 2ND STAGE,
PEENYA INDUSTRIAL AREA, PEENYA
BENGALURU - 560 058
(REPRESENTED BY ARINDAM LAHIRI
HEAD OF TAXATION)
INCORPORATION UNDER RULE 29 OF THE
COMPANIES ACT

... PETITIONER

(BY SRI. SYED M. PEERAN, ADVOCATE,
SRI ROHAN KARIA, ADVOCATE AND
SRI NISCHAL K.M., ADVOCATES)

Digitally
signed by
VIDYA G R
Location
HIGH COURT
OF
KARNATAKA

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL TAXES
VANIJYA THERIGE KARYALAYA
GANDHINAGAR
BANGALORE - 560 009



3. JOINT COMMISSIONER OF COMMERCIAL TAXES
(APPEALS 6)
TTMC COMPLEX, BMTC BUILDING
SHANTHINAGAR,
BANGALORE - 560 027

4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
KIADB BUILDING,
PEENYA INDUSTRIAL AREA
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. SHAMANTH NAIK, HCGP)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) QUASH THE IMPUGNED ORDER DATED 26/12/2023 PASSED BY THE R3 IN THE MATTER OF GST APPEAL NO. 110/2022-23 (ANNEXURE-A) FOR THE PERIOD DECEMBER 2019; B) DIRECT THE R3 TO RESTORE THE GST APPEAL NO. 110/2022-23 (ANNEXURE-A) FILED BY THE PETITIONER CHALLENGING THE REFUND REJECTION ORDER NO. JCCT/DGSTO-06/RFD/225/LGSTO-075/2021-22 DATED 03/03/2022 (ANNEXURE-E) PASSED BY THE R4 AND TO ADJUDICATE THE SAME ON MERITS; C) DIRECT R3 TO GRANT REFUND OF EXCESS TAX OF RS. 68,18,776/- ALONG WITH CONSEQUENTIAL INTEREST IN TERMS OF SECTION 56 OF THE CGST ACT, 2017 VIDE ANNEXURE-E AND ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner has sought for issuance of writ of certiorari to set aside the impugned order at Annexure-'A' dated 26.12.2023, whereby the appeal filed under Section 107(11) of the KGST/CGST Act, 2017 ('the Act' for brevity) was dismissed on the ground that the appeal was filed beyond time and the delay was such that it would be beyond the time that was condonable under Section 107(4) of the Act.

2. The facts on record would indicate that the refund order of the petitioner came to be rejected on 03.03.2022 which order was served on the petitioner on 03.03.2022. The appeal was filed through online mode, i.e. GST common portal on 03.06.2022 as is evident from the Form GST-APL-01.

3. The appeal is required to be filed under Section 107 read with Rule 108 of the CGST Rules, 2017 within a period of three months from the date on which the



decision or order was communicated. Section 107(1) of the CGST Act reads as follows:-

"107-Appeals to Appellate Authority - (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person."

4. The only ground which apparently has been taken note of, for rejecting the appeal was the date of physical re-filing of the appeal on 25.01.2023. It is not in dispute that the appeal was filed in online mode on 03.06.2022 though physical filing of the order impugned was made on 25.01.2023. Under Rule 108(3) of CGST Rules, 2017, prior to its substitution provided that the date of filing of appeal would be the date when the certified copy of the decision or order is submitted where such order was submitted after seven days from the date of filing Form GST APL-01.



5. Rule 108(3) of CGST Rules prior to its substitution by way of amendment on 26.12.2022 vide Notification No.26/2022-CT read as follows:-

"Appeal to the Appellate Authority

108. (1) xxx

(2) xxx

(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".

(emphasis supplied)



It must be noticed that Rule 108(3) is substituted with modification vide Notification No.26/2022-CT dated 26.12.2022 and the substituted Rule reads as follows:-

"In the said rules, in rule 108, for sub-rule (3), the following sub-rule shall be substituted, namely:-

"(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 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 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 the 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."

(emphasis supplied)

6. The change effected by virtue of Rule 108(3) is that the date of appeal would be the date of issuance of acknowledgment (which was on 03.06.2022 at Annexure-'G') and such change is in contradistinction to the earlier requirement which provided that the date of appeal would be the date of furnishing of certified copy of the order, if submitted after seven days. If that were to be so, the date of physical filing of the certified copy ought not to have been taken note of.

7. Though appeal was filed prior to substitution of Rule 108(3), in the present case, the matter having been decided after the amendment by way of substitution, the amended Rule wherein Rule 108(3) ought to be taken note



of. Further, it must be noticed that the substitution of sub-rule(3) ought to date back from the date when the Rule was introduced.

8. The substituted provision is in the nature of clarification.

In the Minutes of 48th GST Council held on 17.12.2022, it was held as follows:-

"8.6.19 Law Committee accordingly recommended that to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgement by the appellate authority, an amendment might be made in sub-rule (3) of Rule 108 and in Rule 109 of the CGST rules, 2017 and Form GST APL-02. The details of the same are provided in the agenda note.

The Council agreed with the recommendation of the Law Committee."

9. In light of the same, it is clear that substitution was to provide clarity on the requirement of submission of certified copy of the order. If that were to be so, the



substitution in order to clarify would have retrospective effect and accordingly, the substituted Rule ought to apply in the case of petitioner as well.

10. Accordingly, the order at Annexure-'A' dated 26.12.2023 is set aside and in light of the discussion made hereinabove, the date of filing that was to be taken note of is 03.06.2022 which is the date of acknowledgement of filing of the appeal and not 25.01.2023 which was the date of physical filing of the impugned order which was wrongly taken by the Appellate Authority. Accordingly, as the delay requires to be condoned and there being no ambiguity in the position of law, the delay is condoned and the matter is remitted for consideration afresh. All contentions are kept open. The parties to appear before the Appellate Authority on 08.07.2024.

Accordingly, the petition is ***disposed off.***

**Sd/-
JUDGE**

VGR