

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P. Nos.17522 & 17523 of 2020

M/s.PKV Agencies,
represented by its Partner P.Vignesh ... Petitioner in both the W.Ps

vs.

1.The Appellate Deputy Commissioner
(GST) (Appeals),
Vellore Fort Ground Road,
Vellore.

2.The State Tax Officer (CIC),
Central Intelligence Cell,
Vellore Intelligence,
Arcot,Vellore..... Respondents in both the W.Ps

Prayer in both the W.Ps: Writ petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus to direct the first respondent to take on record the appeal dated 13.12.2019 filed electronically against order dated 23.10.2019 passed in GSTIN 33AAVFP9903E1ZX/2018-19 and 33AAVFP9903E1ZX/2019-20 on merits and after hearing the petitioner.

For petitioner in both W.Ps : Mr.Hari Radhakrishnan

For respondents in both W.Ps : Ms.Amirtha Dinakaran,
Government Advocate

COMMON ORDER

These writ petitions have been filed seeking for a direction to the first respondent to take on record the Appeal dated 13.12.2019, filed electronically against the order dated 23.10.2019 passed in GSTIN 33AAVFP9903E1ZX/2018-19 and 33AAVFP9903E1ZX/2019-20.

2.The only issue that arises for consideration in these writ petitions is whether an Appeal can be entertained as per the provisions of Rule 108 of the Tamil Nadu Goods and Service Tax Rules, 2017 even if the assessee has not submitted a certified copy of the order within a period of seven days as stipulated under Rule 108(3) of the aforementioned Rules. The petitioner has filed a Statutory Appeal under Section 107 of the Tamil Nadu Goods and Service Tax Act, 2017 electronically on time. But as required under Rule 108(3) of the Tamil Nadu Goods and Service Tax Rules, 2017, they have not filed a hard copy of the impugned order with the respondents, within a period of seven days from the date of filing of the Appeal under Sub Rule (1) of Rule 108 of the Tamil Nadu Goods and Service Tax Rules, 2017. Only after a period of one month from the date of the impugned order, the petitioner has approached the respondents with a certified copy of the impugned order, which was refused to be

received on the ground that they have not filed the certified copy of the order, within a period of seven days from the date of filing of the appeal as provided under Proviso to Rule 108(3) of the Tamil Nadu Goods and Service Tax Rules, 2017. Aggrieved by the said decision, the petitioner has filed these writ petitions.

3.A counter affidavit has been filed by the respondents reiterating the contents of the proviso to Rule 108(3) of the Tamil Nadu Goods and Service Tax Rules, 2017. They would reiterate that since the certified copy of the impugned order was not submitted within a period of seven days from the date of filing of the Appeal by the petitioner, the respondents were right in refusing to entertain the Appeal filed by the petitioner as per Section 107 of the Tamil Nadu Goods and Service Tax Act, 2017.

4.The issue for consideration in this writ petition was also the subject matter of consideration by the Division Bench of Orissa High Court in the case of **M/s.Atlas PVC Pipes Limited vs. State of Odisha and others**, which was decided on 29.06.2022 in W.P. (C) No.14163 of 2022. While deciding the issue in favour of the assessee, the Division

Bench of Orissa High Court in the aforesaid decision, has observed as follows:

'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.'

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.

6. This Court in agreement with the view taken by the Division Bench of the Orissa High Court in the aforesaid decision. The merit of the matters in the Appeal filed by the petitioner should not have been sacrificed for non compliance of a procedural requirement, which in the considered view of this Court is only a technical defect.

7. For the foregoing reasons, this Court is of the considered view that the direction sought for by the petitioner in these writ petitions has to be granted, i.e., to direct the respondents to accept the certified copy of the impugned order submitted by the petitioner and thereafter process the Appeal filed under Section 107 of the Tamil Nadu Goods and Service Tax Act if it is otherwise in order and entertain the said Appeal thereafter and decide the same, on merits and in accordance with law.

8. In the result, this Court directs the petitioner to submit the certified copy of the impugned order dated 23.10.2019 before the first respondent, within a period of one week from the date of receipt of a copy of this order. On receipt of the said certified copy, the first respondent shall process the Appeal filed by the petitioner under Section 107 of the Tamil Nadu Goods and Service Tax Act 2017 and entertain the same if it is otherwise in order and thereafter, pass final orders, on merits and in accordance with law, within a period of three months thereafter.

9. With the above direction, these writ petitions are disposed of. No

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Index: Yes/No

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ABDUL QUDDHOSE, J.

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