

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:23371
Court No. 1

Present:

The Hon'ble Justice Shekhar B. Saraf

WRIT TAX NO.83 OF 2024

VISIBLE ALPHA SOLUTIONS INDIA PRIVATE LIMITED

v.

COMMISSIONER, CGST APPEALS, NOIDA AND ANOTHER

For the Petitioner : Mohit Gupta, Advocate

For the Respondents : Amit Mahajan, Advocate

1. Heard Sri Mohit Gupta, learned counsel appearing on behalf of the petitioner and Sri Amit Mahajan, learned counsel appearing on behalf of the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner is aggrieved by the order dated October 18, 2023 passed by the respondent No.1/Commissioner, CGST (Appeals), NOIDA rejecting the two appeals filed by the petitioner on the ground that the same were time barred, as the self-certified copy of the decision or order was not made available within time as per proviso to Rule 108 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the Rules").

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. With the aforesaid directions, the writ petition is allowed.

Date: 12.02.2024
Kuldeep

(Shekhar B. Saraf, J.)