**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 13209 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 13210 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 13212 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 13213 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 13215 of 2023

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OTSUKA PHARMACEUTICAL INDIA PVT. LTD.
Versus
UNION OF INDIA & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1
for the Respondent(s) No. 1
MR SIDDHARTH H DAVE(5306) for the Respondent(s) No. 2,3,4

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 27/03/2024

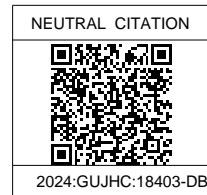
COMMON ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. These petitions are arising from the common order passed under Rule 108(3) of the Central Goods & Service Tax Rules, 2017 (for short 'the Rules').

1.1 As the petitioners in these petitions is common, all these petitions were heard analogously and are being disposed of by this common order.

2. The petitioner is engaged in the manufacture and export of pharmaceuticals



products and is duly registered under the GST Act. The petitioner, for the period in question, exercised option of exporting goods without payment of tax and seeking refund of unutilised input tax credit as permitted by Section 16 of the Integrated Goods & Service Tax Act, 2017 (for short 'the IGST Act').

2.1 The petitioner made an online application for refund on GST portal within the stipulated time limit in the month of August, 2021.

2.2 After issuance of show-cause notice to the petitioner, the adjudicating authority held that there was difference between the value of exports as mentioned in the invoice and the shipping bill. The petitioner filed reply to such show-cause notice, however the adjudicating authority rejected the submission made by the petitioner that refund is required to be provided as per the shipping bill and passed the Order-in-Original sanctioning partial amount only and rejected the part of the refund claim.

2.3 The petitioner, being aggrieved, preferred appeals online under Section 107 of the CGST Act. The petitioner was thereafter called upon to submit the certified copies of the Order-



in-Original. The petitioner submitted such copies during the pendency of the appeal, however the appellate authority, relying upon sub-rule (3) of the Rule 108, calculated the period of delay by observing that the petitioner failed to submit certified copy of the decisions or orders within the period as stipulated under Rule 108 of the Rules and considered the same delay as an inordinate delay ranging from 71 days to 106 days and decline to entertain the appeals on the ground of delay.

2.4 Being aggrieved, the petitioner has challenged impugned order dated 31st January, 2023 rejecting the appeals of the petitioner on the ground of delay.

2.5 The appellate authority has summarised the details of all the appeals in the following two tables.

TABLE-A

Sr. No.	Appeal No.	Date of online appeal	Date of submission of certified copies of order/documents	ARN No.	Order No. and date	Refund rejected (In Rs.)
1	GAPPL/ADC/GSTP/2429/2022	21.09.2021	08.08.2022	AA240521038352P	ZU2406210281007 dated 22.06.2021	34,47,990/-
2	GAPPL/ADC/GSTP/2/2023	29.11.2021	09.12.2022	AA2407210595168	ZN2409210051466 dated 03.09.2021	13,18,459/-
3	GAPPL/ADC/GSTP/3/2023	08.02.2022	09.12.2022	AA2409210737451	ZW2411210170357 dated 12.11.2021	62,78,699/-
4	GAPPL/ADC/GSTP/4/2023	01.11.2021	09.12.2022	AA2406210345610	ZO2408210034376 dated 29.07.2021	53,49,422/-
5	GAPPL/ADC/GSTP/5/2023	27.09.2021	09.12.2022	AA2405210744200	ZV2407210307886 dated 22.07.2021	39,95,637/-



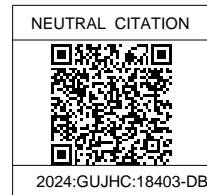
6	GAPPL/ADC/ GSTP/6/2023	07.12.2021	09.12.2022	AA2407210595168	ZX409210180855 dated 13.09.2021	1,08,42,017/-
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TABLE-B

Sr. No.	Date of online appeal	Date of submission of certified copies of order/documents	Date of order issued by the adjudicating authority	Date of completion of 3 months period as per Section 107 of CGST Act, 2017	Date of further allowing condonable period of one month as per Section 107 of CGST Act, 2017	Date allowed for filing appeals as per Apex Court's order dated 10.01.2022 allowing period of 90 days from 01.03.2022	Actual dates of filing appeals as per Section 107 reada with Rule 108 of CGST Act/Rules	Delayed by days
	A	B	C	D	E	F	G	H
1	21.09.2021	08.08.2022	22.06.2021	21.09.2021	21.10.2021	29.05.2022	08.08.2022	71
2	29.11.2021	09.12.2022	03.09.2021	02.12.2021	02.01.2022	29.05.2022	09.12.2022	106
3	08.02.2022	09.12.2022	12.11.2021	11.02.2022	11.03.2022	29.05.2022	09.12.2022	106
4	01.11.2021	09.12.2022	29.07.2021	28.10.2021	28.11.2021	29.05.2022	09.12.2022	106
5	27.09.2021	09.12.2022	22.07.2021	21.10.2021	21.11.2021	29.05.2022	09.12.2022	106
6	07.12.2021	09.12.2022	13.09.2021	12.12.2021	12.01.2022	29.05.2022	09.12.2022	106

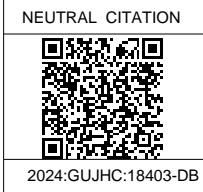
2.6 The appellate authority, referring to Rule 108(3) of the Rules as well as Circular No.157 dated 20th July, 2021, rejected the appeals of the petitioner on the ground of delay.

3. Learned advocate Mr.Uchit Sheth for the petitioner submitted that Rule 108(3) of the Rules would not apply as the petitioner has preferred online appeals on the basis of Order-in-Original uploaded by the adjudicating authority and therefore, the date of submission of certified copy by the petitioner would not be the date of filing of appeal. Reliance was placed on the Minutes of 48th Meeting of the GST Council dated 17th December, 2022 which provided for amendment in Rule 108 as a clarificatory



amendment, which provides that the period of limitation could be considered only if the order is passed manually and not uploaded on the common portal and the same is not available to the appellate authority on the common portal. In such cases, non-submission of the certified copy by the appellant restricts the appellate authority from entertaining the same. It was, therefore, submitted that the entire basis of the order passed by the appellate authority considering the date of submission of the certified copy by the petitioner to be considered as actual date of filing of appeal is without any basis.

3.1 Learned advocate Mr.Dave appearing for the respondent authorities could not controvert the above submissions made by learned advocate Mr.Sheth for the petitioner, however heavily relied on and referred to the reasons assigned by the appellate authority. It was submitted that the appellate authority has simply followed the Rule 108(3) in letter and spirit and therefore, no interference may be made in the impugned order passed by the appellate authority, more particularly in view of para-4C of the Circular No.157 dated 20th July, 2021 relied on by the appellate authority.



3.2 It was, therefore, submitted by learned advocate Mr.Dave that the appellate authority could not have granted any extension of time in late submission of certified copy of the Order-in-Original by the petitioner.

4. Considering the above submissions, it would be germane to refer to Rule 108 of the Rules, which reads as under.

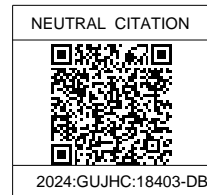
Rule 108 - Appeal to the Appellate Authority. (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement 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) 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.

5. On perusal of the above Rule, it is clear that the petitioner is required to submit decision or order appealed against within seven



days of filing of appeal under sub-rule (1) and final acknowledgment indicating appeal number is to be issued in Form GST APL-02 by the appellate authority. Therefore, literally applying Rule 108(3) by the appellate authority was justified in rejecting the appeals on the ground of delay.

5.1 However, as the learned advocate for the petitioner has referred to and relied upon Minutes of 48th Meeting of GST Council held on 17th December, 2022, wherein in Item VII, amendment in Rules 108 and 109 is discussed, which reads as under.

VII. Amendment in Rule 108 and Rule 109

8.6.15 Principal Commissioner, GST Policy Wing further mentioned that in terms of Section 107 (1) of the CGST Act, 2017, any person aggrieved by any decision or order passed by an adjudicating authority may appeal to the concerned appellate authority within three months from the date of communication of the said decision or order to such person. Similar provision exists under sub-section (2) of Section 107 of CGST Act to provide for filing appeal by an officer authorised by the Commissioner to the appellate authority within six months from the date of communication of the said decision or order.

8.6.16 Further, as per Rule 108 (3) of the CGST Rules, in respect of an appeal filed in terms of the provisions of Section 107 (1) of CGST Act, 2017, a certified copy of the decision or order appealed against is required to be submitted within seven days of filing the appeal in FORM GST APL-01 under sub-rule (1) of Rule 108. The date of filing appeal in case where certified copy is submitted within seven days of filing appeal is the date of issuance of provisional acknowledgement, otherwise it is the date of submission of the certified copy.



8.6.17 Similarly, Rule 109 (2) of CGST Rules, 2017 provides for requirement of submission of certified copy of the order appealed against within seven days of filing application in FORM GST APL-03 in terms of sub-section (2) of Section 107 of CGST Act.

8.6.18 Law Committee deliberated on the issue and observed that in GST regime, when an order which is appealed against is issued or uploaded by the adjudicating authority on the common portal, the same can be viewed by the appellate authority. Accordingly, the requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity, pales into insignificance considering that the order has been uploaded by the adjudicating authority using his Digital Signature Certificate and the same is available for viewing or downloading by the appellate authority on the portal. However, in cases where the decision or order has been passed manually and has not been uploaded on the common portal, the same is not available to the Appellate Authority on the common portal. In such cases, non-submission of the certified copy by the appellant restricts the Appellate Authority from entertaining the same

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 acknowledgment 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.

5.2 As the GST Council has agreed to recommendations of the Law Committee which provides that when an order which is appealed against is issued or uploaded on the common portal and the same can be viewed by the appellate authority, requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity



would be insignificant in view of availability of the order online. Therefore, considering such recommendation, amendment which is clarificatory in nature, has come into effect from 26th December, 2022 on the statute and reads as under.

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.

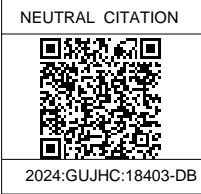
(2) The grounds of appeal and the form of verification as contained in FORM GST APL- 01 shall be signed in the manner specified in rule 26.

(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 APL01 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.

6. In view of the above amendment which



would have a retrospective effect as the same is a clarificatory in nature and therefore, the impugned order passed by the appellate authority rejecting the appeal on the ground of delay would not survive. The impugned order is, accordingly, quashed and set aside and the matter is remanded back to the appellate authority to pass a fresh *de novo* order on merits after giving opportunity of hearing to the petitioner.

7. It is clarified that this Court has not gone into the merits of the matter and the same to be decided by the appellate authority after giving opportunity of hearing to the petitioner in accordance with law.

7.1 Such exercise shall be completed within 12 weeks from the date of receipt of copy of this order.

8. The petitions are accordingly disposed of. No order as to costs. Notice is discharged.

(BHARGAV D. KARIA, J)

(NIRAL R. MEHTA, J)

ANUP

