Sl No. 14
04.03.2022.
Ct No. 2

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)

WPA 167 of 2022
Bardhaman Rice Udyog Private Limited

-versus

Assistant Commissioner, Coochbehar Charge & Ors.

Mr. Anil Kumar Dugar
Mr. Rajib Mukherjee
Mr. Debajit Kundu
... for the petitioner.

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh
... for the State respondents.

The appeal filed by the petitioner on August 10, 2021 challenging an order passed on May 25, 2021 by the Assistant Commissioner of Revenue, Coochbehar Charge stood rejected on October 29, 2021 on account of non-filing of the certified copy of the impugned order in accordance with the provisions of Rule 108(3) of the West Bengal GST Rules, 2017.

Rule 108(3) of the aforesaid Rules mentions that 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 acknowledgment, indicating appeal number shall be issued thereafter.

It further mentions that if the certified copy of the 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 issuance of provisional acknowledgement.

If the certified copy is submitted after seven days, the date of filing of the appeal shall be the date of submission of such copy. The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

According to the petitioner, the certified copy of the appeal could not be filed within the time as stipulated in law.

It has further been submitted that the said appeal could not have been rejected relying upon Rule 108(3) of the Rules. At best, the appeal may be treated as filed only when the certified copy is submitted and a formal appeal number is issued by the department.

Learned advocate representing the respondents submits that there is intentional delay and laches on the part of the petitioner in submitting the certified copy of the impugned order.

From the order impugned dated October 29, 2021 it appears that the copy of the order was duly forwarded to the petitioner in the registered e-mail address on September 23, 2021 with a direction to submit certified copies of the order appealed against within September

30, 2021 and in the event of failure to submit the same the appeal shall be rejected. As the petitioner failed to supply the certified copy within time, the appeal of the petitioner stood rejected.

It appears from the explanation provided to Rule 108(3) that the appeal shall be treated as filed only after the final acknowledgement indicating the appeal number is issued.

In the present case, the appeal number could not have been issued due to non-filing of the certified copy. There has admittedly been a delay on the part of the petitioner in filing the certified copy, though apparently the appeal appears to have been filed within the period of limitation.

Accordingly, the order setting aside the appeal stands quashed. The appeal of the petitioner shall be treated as filed only after the certified copy of the impugned order is filed. The appellate authority shall proceed to consider the appeal on merits in accordance with law.

The petitioner will be entitled to rely upon the judgment passed by the Hon'ble Supreme Court relating to extension of the period of limitation during the Covid period.

Leave granted to the petitioner to file the certified copy within a week from date. In the event of non-filing, the appeal be treated as dismissed.

The writ petition stands disposed of.

Supplementary affidavit filed on behalf of the petitioner annexing the copy of the order of rejection dated October 29, 2021 be retained with the records.

Affidavit-of-service filed in Court today is taken on record.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

Sh **(Amrita Sinha, J.)**