IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal No.289 of 2023

M/s. Golcha Garments,
Represented by its Proprietor,
Mr.Gautam Chand Jain,
Having an office at 2854-C,
Thaneer Pandal Colony,
Gandhi Road, Anupparpalayam,
Tirupur - 641 652. .. Appellant

Versus

1. The Joint Commissioner of GST &
Central Excise (Appeals),
Coimbatore,
No.6/7, A.T.D.Street, Race Course Road,
Coimbatore - 641 018.

2. The Proper Officer,
Goods and Service Tax Department & Excise,
Tirupur Division, first floor, Kumaran Shopping Complex,
Kumaran Road, Tirupur - 641 601. .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 12.12.2022 passed by the learned Judge in WP.No.33363 of 2022.

For Appellant	:	Mr.Sanjay Rajpurohit for M/s. Rajpurohit Law House
For Respondents	:	Mr.Rajinish Pathiyil, Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This writ appeal is directed against the order passed by the learned Judge in W.P.No.33363 of 2022, on 12.12.2022.

2. According to the appellant / assessee, they are proprietorship concern and engaged in the business of manufacture and Export of Apparels. They made various exports during the period between October 2019 and March 2020 and filed all the invoices appropriately in GSTR-1, besides disclosures in GSTR-3B for the respective months and thus, they are entitled to file GST RFD-01 for refund claim. Accordingly, they had applied for a refund of Rs.7,39,532/- for the said period. While so, on 16.02.2021, they were issued with show cause notice by the second respondent thereby directing them to upload compliance documents for Notification No.16/2020. Thereafter, on 29.03.2021, the second respondent rejected the GST Refund Claim on the premise that the appellant has not replied to the said notice. The said order was challenged by the appellant by filing an appeal before the first respondent, who rejected the said appeal, by order dated 26.08.2022. Aggrieved by the same, the appellant preferred WP.No.33363 of 2022, which also ended in dismissal on 12.12.2022 on the ground of limitation. Therefore, this writ appeal came to be filed by the appellant.

3. Today, when the matter was taken up for hearing, the learned standing counsel appearing for the respondents produced a copy of the notification No.53/2023-CENTRAL TAX dated 02.11.2023 issued by the Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, New Delhi, wherein, time is granted to file an appeal against the order in Form GST APL-01 in accordance with sub section (1) of section 107 of the Central Goods and Services Tax Act, 2017, on or before 31st day of January 2024, to the taxable persons, who could not file the same within the time stipulated. For better appreciation, the said notification is extracted below:

> *"S.O.4767(E). - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:*
>
> *2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:*
>
> *Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.*
>
> *3. No appeal shall be filed under this notification, unless the appellant has paid-*

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub section (1) of section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification. "

4. In reply, the learned counsel appearing for the appellant sought liberty to the appellant to approach the appellate authority for filing necessary appeal.

5. In view of the above, liberty is granted to the appellant to approach the appellant authority, if so advised. Accordingly, this writ appeal stands disposed of. No costs.

[R.M.D., J.] [M.S.Q., J.]

03.11.2023

Index : Yes / No
Internet : Yes / No
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To

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