IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

256 **CWP-24713-2022 (O&M)**
Date of decision:-27.02.2023

VIVEK KUMAR
.... Petitioner

VS.

JOINT COMMISSIONER OF STATE TAX, FARIDABAD AND ANOTHER

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ankush Rampal, Advocate for
Mr. Manjeet Saini, Advocate for the petitioner.

Ritu Bahri, J. (Oral)

The present petition is for setting aside order dated 21.09.2022 (Annexure P-5) passed by the Joint Commissioner of State Tax (Appeals)- cum-Appellate Authority, Faridabad, whereby appeal filed by petitioner, against order of revocation of cancellation of Registration in Form GST REG-05, has been dismissed on the ground that the petitioner has failed to submit certified copy of impugned order.

Learned counsel for the petitioner further submits that the impugned order has been passed without giving opportunity of hearing to the petitioner.

Learned State counsel has handed over a copy of memo dated 24.02.2023 wherein Sub Rule (3) of Rule 108 of the HGST

Rules, 2017 has been amended, vide notification dated 25.01.2023 w.e.f 26.12.2022. Before amendment, sub Rule (3) of Rule 108 of the HGST Rules, 2017, read as under:-

> "(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filling 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," After amendment, the amended rule is reproduced as under:-
>
> "(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, 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 acknowledgment 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 acknowledgment, 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 acknowledgment 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."

Now, the provision of submitting certified copy of the decision or order appealed against has been done away with. The amended rules have also been reiterated to First Appellate Authorities vide letter no. 152/GST-II, dated

24.02.2023."

Keeping in view the fact that now the provision of certified copy of the decision or order appealed has now been done away with, as per memo dated 24.02.2023 and this memo has been reiterated to the First Appellate Authorities, the present petition is also allowed and order dated 21.09.2022 (Annexure P-5) is set aside. A direction is given to the Appellate Authority to decide the appeal on merits, expeditiously, after taking into consideration the photocopy of the impugned order.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

27.02.2023
pooja saini

Whether speaking/reasoned *:* Yes/No
Whether reportable ***:* Yes/No**