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W.P.No.18642 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.18642 of 2024
and W.M.P.No.20450 of 2024

M/s.Kasturi & Sons Pvt. Ltd.,
859, 860, Kasturi Buildings,
Anna salai, Chennai-600 002,
Represented by its Company Secretary,
Mr.N.Nambi Rajan.

... Petitioner

-VS-

Additional Commissioner of GST &
Central Excise (Appeals-1),
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order viz. Order-in-Appeal No.40-44/2024 dated 13/03/2024 passed by the Respondent, quash the same, besides directing the Respondent to adjudicate the Appeal



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No.190/2023 (GSTA-1) (CN) dated 02/08/2023 in accordance with law, treating the same as filed within time.

For Petitioner : Mr.T.R.Ramesh

For Respondent : Mr.Rajnish Pathiyil,
Senior Standing Counsel

ORDER

In this writ petition, an appellate order dated 13.03.2024 is assailed. The petitioner had applied for refund under Section 54 of applicable GST enactments. Such application was rejected by order dated 30.08.2022. The petitioner carried the matter in appeal before the appellate authority by presenting such appeal online on 31.10.2022. The time limit for filing such appeal was up to 28.11.2022. On account of the hard copy of the appeal being submitted on 02.08.2023, the appeal was rejected.

2. Learned counsel for the petitioner referred to the facts set out above and submitted that interference with the impugned order is warranted in as much as the appeals were filed within time.



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3. Mr.Rajnish Pathiyil, learned senior standing counsel, accepts notice for the respondent. He submits that the date of issuance of provisional acknowledgment shall be considered as the date of filing of the appeal only if the order appealed against was uploaded on the common portal.

4. The petitioner has placed on record evidence that the appeal was filed in Form GST APL-01 through the online mode on the GST portal on 31.10.2022. Such filing was in accordance with Rule 108(1) of the Central Goods and Services Tax Rules, 2017 (the GST Rules) and within the prescribed period of limitation.

5. Sub-rule(3) of Rule 108 of the Central Goods and Services Tax Rules, 2017 is pertinent for the adjudication of this writ petition. The said sub-rule is extracted below:

“(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 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.



Explanation. - For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgment, indicating the appeal number, is issued."

6. The above sub-rule indicates clearly that the requirement of filing a self-certified copy of the order appealed against becomes applicable, as per the first proviso thereto, only where the order appealed against is not uploaded on the common portal. In the case at hand, the order was duly uploaded on the common portal. In such event, the date of online filing is the date of filing of the appeal. Even otherwise, the filing of a hard copy is a purely procedural requirement. Consequently, the impugned order is not sustainable.

7. Therefore, impugned order dated 13.03.2024 is set aside and the appellate authority is directed to receive and dispose of the appeal on merits.



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8. W.P.No.18642 of 2024 is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2024
(1/4)

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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To

Additional Commissioner of GST &
Central Excise (Appeals-1),
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.



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