$~30

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th December, 2024

\+ **W.P.(C) 1062/2024 & CM APPL. 4433/2024**

CHEGG INDIA PVT LTD .....Petitioner

Through: Mr. Yogendra Aldak, Mr. Agim Arora and Ms. Purvi Sinha, Advs.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Aditya Singla, SSC, CBIC, Mr. Ritwik Saha, Mr. Umang Mishra, Ms. Medha Navami, Mr. Sahil Parashar & Mr. Inderjeet, Advs. (M: 9958846148)

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner-Chegg India Pvt. Ltd. under Article 226 of the Constitution of India challenging various impugned orders passed by Respondent No.2-Additional Commissioner, CGST, Appeals-1, Delhi on different dates. The impugned orders are categorised as under:

i. Order in Appeal No. 105 to 115 dated 18th April, 2023 (hereinafter ***'OIA No. 105 to 115'***)
ii. Order in Appeal No. 131 dated 28th April, 2023 (hereinafter ***'OIA No. 131'***)
iii. Order in Appeal No. 132 dated 28th April, 2023 (hereinafter ***'OIA No. 132'***)

3. These appeals arise from various refund applications filed by the

Petitioner before the Respondent No.3-Assistant Commissioner CGST (hereinafter ***'Proper Officer'***) claiming the accumulated input credit for the months of May, 2019 to December, 2019 and January, 2020 to May, 2020. These refund applications were disposed of by the Proper Officer *vide* various orders (hereinafter '***Orders in Original'***). The tabular statement showing the various dates on which the Orders in Original were passed by the Proper Officer in relation to the Petitioner's refund applications, as well as the corresponding dates on which appeals against said orders were filed, both physically and online, is set out below:

A. OIA No. 105 to 115 dated 18th April, 2023

S. No.	Relevant period and OIO against which appeal filed	Appeal No.	Date of online filing	Date of physical filing
1.	May 2019 OIO dated 19.08.2021	321/GST/Appeal-1/East/2022 dated 15.11.22	17.11.2021	15.11.2022
2.	June 2019 OIO dated 26.08.2021	320/GST/Appeal-1/East/2022 dated 15.11.22	17.11.2021	15.11.2022
3.	July 2019 OIO dated 16.09.2021	319/GST/Appeal-1/East/2022 dated 15.11.22	09.12.2021	15.11.2022
4.	Aug 2019 OIO dated 16.09.2021	318/GST/Appeal-1/East/2022 dated 15.11.22	18.11.2021	15.11.2022
5.	Oct 2019 OIO dated 16.09.2021	317/GST/Appeal-1/East/2022 dated 15.11.22	18.11.2021	15.11.2022
6.	Sept 2019 OIO dated 11.11.2021	316/GST/Appeal-1/East/2022 dated 15.11.22	18.11.2021	15.11.2022

7.	Nov 2019 OIO dated 08.10.2021	315/GST/Appeal-1/East/2022 dated 15.11.22	09.12.2021	15.11.2022
8.	Dec 2019 OIO dated 08.10.2021	314/GST/Appeal-1/East/2022 dated 15.11.22	18.11.2021	15.11.2022
9.	Jan 2020 OIO dated 11.11.2021	313/GST/Appeal-1/East/2022 dated 15.11.22	09.12.2021	15.11.2022
10.	Feb 2020 OIO dated 11.11.2021	312/GST/Appeal-1/East/2022 dated 15.11.22	09.12.2021	20.12.2022
11.	Mar 2020 OIO dated 11.11.2021	311/GST/Appeal-1/East/2022 dated 15.11.22	09.12.2021	20.12.2022

B. OIA No.131 dated 28th April, 2023

S. No.	**OIA No.**	**Relevant period and OIO against which appeal filed**	**Appeal No.**	**Last date of filing of appeal**	**Date of online filing**	**Date of physical filing**
1.	131	May 2020 OIO dated 12.08.2022	349/GST/Appeal-1/East/2022	12.11.2022	12.12.2022	20.12.2022

C. OIA No. 132 dated 28th April, 2023

S. No.	**OIA No.**	**Relevant period and OIO against which appeal filed**	**Appeal No.**	**Last date of filing of appeal**	**Date of online filing**	**Date of physical filing**

1.	132	April 2020 OIO dated 30.06.2022	350/GST/ Appeal-1/East/2022	30.09.2022	12.12.2022	20.12.2022

4. The said appeals against the respective Orders in Original were rejected by the ld. Additional Commissioner, CGST-Respondent No. 2, on the ground of being barred by limitation. The Respondent No. 2 considered the date of physical filing as the official filing date, disregarding the date of online filing, which was within the prescribed limitation period. The principal contention in this writ petition is that Respondent No. 2/Appellate Authority has erred in dismissing the application on the grounds of delay, as the appeals in ***OIA No. 105-115*** and ***OIA No. 131*** were filed within the prescribed limitation period. Consequently, the key question to be determined is whether the appeals were indeed filed within the limitation period in accordance with the relevant sections and rules or not?

5. The refund applications were filed under Section 54 of the CGST Act, 2017 and the Order in Original was passed under Section 54(7) of the CGST Act, 2017. Such orders are appealable to the Appellate Authority *i.e.,* Respondent No. 2 - Additional Commissioner, CGST, under Section 107 of CGST Act, 2017. For the present purposes Section 107(1), Section 107(4) from CGST Act, 2017 are relevant and are set out below:

> *"107. **Appeals to Appellate Authority**.— (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be **prescribed within three months from the date on which the said decision or order is communicated to such person.***

xxxx
*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, **as the case may be, allow it to be presented within a further period of one month**"*

6. As per Section 107(1) and Section 107(4) of the CGST Act, 2017, the total period available to the Assessee for preferring an appeal is three months plus one month. The other relevant provisions on limitation in the present case would be Rule 108 of CGST Rules, 2017 (both pre and post amendment). Rule 108 of the CGST Rules, 2017 provides for the manner in which the Appeal to the Appellate Authority is to be filed. It provides for the appeal to be filed in FORM GST APL-1 along with the relevant documents either electronically or otherwise.

7. Rule 108 was initially enacted as part of the CGST Rules, 2017 and the same was amended with effect from 26th December, 2022. Both the pre and post amendment rule are relevant and are set out below:

Provision Pre-amendment

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

Provision Post-amendment

"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) 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

<u>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:</u>

Provided further that <u>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"</u>

8. As per pre-amended Rule 108 of CGST Rules, the appeal could be filed either electronically or otherwise. Upon filing of the appeal, along with relevant documents, provisional acknowledgement was to be issued. Thereafter, under Rule 108(3) of CGST Rules, certified copy of the decision could be filed within seven days of the filing of the appeal, upon which the final acknowledgement indicating the appeal no. would be issued for all practical purposes. However, subject to the condition that certified copy is filed within seven days, the date of issuance of provisional acknowledgement was the date of filing of the appeal. If the certified copy of the decision or order was filed after seven days, then the date of filing of the appeal would be the date of filing of the physical copy.

9. These rules were amended as on 26th December, 2022 and as per the amended Rule 108 of CGST Rules, the provisional acknowledgement was issued in the same manner as was being done in the pre-amendment. However, post amendment, the decision or order appealed could be uploaded on the common portal upon which the appeal number would be issued by the

Appellate Authority. This date, when the order is uploaded on the common portal, was to be considered as the date of filing of the appeal. If the order was not uploaded on the common portal, the self-certified copy could be filed within seven days from the date of filing of the final form and final acknowledgement would be issued. Subject to the condition that the self-certified copy is filed within seven days, the date of issuance of provisional acknowledgement was to be the date of filing of the appeal. If the self-certified copy was submitted after seven days, then the date on which self-certified copy was filed, would be the date of filing of the appeal.

10. A perusal of the both these rules reveals that either pre-amendment or post-amendment, the appeal could be filed electronically. The filing of the certified copy of the order or the self-certified copy of the order was for the purpose of ensuring that the copy of the order, which is filed, is of reliable nature.

11. The question is whether the appeals were filed within the time period in terms of Rule 108 or not and if filed with a delay, does it merit condonation. In the present case, the date of online filing in respect of all orders except order-in-appeal No. 132 are within the statutory period which is prescribed *i.e.,* within 4 months. The delay is in the physical filing.

12. The question is as to whether the said delay can be condoned or not. Ld. Counsel for the Petitioner has relied upon the following decisions to contend that the various High Courts, pre-amendment, have condoned delays of a similar nature on the ground that the requirement of physical filing was merely a ***'procedural requirement'***.

Pre Amendment judgements

High Court	Cases
Orissa High Court	*M/s Atlas PVC Pipes Ltd. v. State of Odisha & Ors. 2022 (7) TMI 130-Orissa High Court WP(C) No. 14163/2022*
Madras High Court	*M/s PKV Agencies v. Appellate Deputy Commissions (GST) (Appeals) 2023 (2) TMI 932-Madras High Court.*

13. The Ld. Orissa High Court in its judgement dated 29th June 2022 in ***M/s Atlas PVC Pipes Ltd. (supra)*** in a similar appeal, deciding in favour of the assessee observed as under:

> ***"6.11. Investigating further into the instant matter, this Court finds that Rule 108(3) has not prescribed for condonation of delay in the event where the petitioner would fail to submit certified copy of the order impugned in the appeal nor is there any provision restricting application of Section 5 of the Limitation Act 1963, in the context of supply of certified copy within period stipulated in sub-rule(3) ibid.***
>
> *6.12. The requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as a procedural requirement.*
>
> *6.13.**<u>On the altar of default in compliance of such a procedural requirement, merit of the matter in appeal should not have been sacrificed.</u> <u>Since the petitioner has enclosed the copy of impugned order as made available to it in the GST portal while filing the Memo of Appeal, non-submission of certified copy, as has</u>***

<u>rightly been conceded by the Additional Standing Counsel appearing on behalf of CT&GST Organisation, is to be treated as mere technical defect.”</u>

14. The ld. Counsel for the Petitioner has also relied upon the following decisions, to contend that, post-amendment, such delay has been condoned on the ground that the requirement for physical filing has been eliminated by the amendment dated 26th December 2022.

<u>Post Amendment judgements</u>

<u>High Court</u>	<u>Cases</u>
Punjab and Haryana High Court	*M/s Star Health and Allied Insurance Company Ltd. v. State of Haryana and Ors. 2024 (2) TMI 591-P&H High Court.*
Punjab and Haryana High Court	*M/s Suman Industries v. State of Haryana 2023 (2) TMI 1261*
Punjab and High Court	*Oaknorth (India) Pvt. Ltd. v. Union of India & Ors. 2023 (9) TMI 781-P&H High Court.*

15. The Punjab and Haryana High Court in its judgement dated 27th February 2023 in ***CWP 3602/2023*** titled as '***Suman Industries v. State of Haryana'***, interpreting the corresponding amendment in Haryana GST rules, 2017 observed, that the amendment in effect eliminates the requirement for filing a certified copy of the decision/order while filing an appeal. The relevant paragraphs read as under

“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 filling 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 filling 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 30.01.2023 (Annexure P-4) 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."

16. Ld. Counsel also relies upon ***Hitachi Energy India Ltd. v. State of Karnataka & Ors 2024(7) TMI 53*** in which the Karnataka High Court has recognised that the amendment to rule 108, being clarificatory in nature, shall be retrospectively applicable. The relevant paragraphs in ***Hitachi (supra)*** are read as under:

"7. Though appeal was filed prior to substitution of Rule 108 (3), in the present case, the matter having been decided after the amendment by way of substitution, the amended Rule wherein Rule 108 (3) ought to be taken

note of. Further, it must be noticed that the substitution of sub-rule (3) ought to date back from the date when the Rule was introduced.

8. The substituted provision is in the nature of clarification.

In the Minutes of 48th GST Council held on 17.12.2022, it was held as follows:-

> ***"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 acknowledgement 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."***

9. In light of the same, it is clear, that substitution was to provide clarity on the requirement of submission of certified copy of the order. If that were to be so, the substitution in order to clarify would have retrospective effect and accordingly, the substituted Rule ought to apply in the case of petitioner as well."

17. Based on the above judgements, the submission being made on behalf of the Petitioner is that the amendment dated 26th December 2022 which was made in Rule 108 shows that the said amendment was merely clarificatory in nature. It was merely clarifying the rule as it existed and, therefore, the benefit of online filing along with the electronic copy of the decision ought to be considered as sufficiently within the limitation period. The ld. Counsel has also relied upon the observations made in ***Hitachi (supra)*** to argue that since the substitution was to merely provide clarity to the requirement of submission of the certified copy of the order which is a

procedural requirement, the Appellant cannot be non-suited on the ground of limitation.

18. This Court had issued notice on 16th December, 2024 and Mr. Aditya Singla, ld. Counsel had accepted notice. He submitted on behalf of the Department that in this case clearly, the benefit of the amended rule ought not to be extended to the Petitioner as there was a clear delay in the filing of the physical certified copy of the order.

19. A perusal of the amended rule and the decisions which have been cited hereinabove make it clear that the condition to physically file the certified copy of the impugned decision/order is not mandatory. Therefore, an appeal filed prior to the amendment, where the certified copy was submitted with a delay, may be condoned if the online filing was completed within the prescribed limitation period. Ultimately, what is to be borne in mind is the fact that online filing was within limitation. There is no doubt being raised as to the genuineness of the copy of the order, which has been filed.

20. Under such circumstances, merely because the physical submission of the appeal and the order was much later, when the online filing was within the prescribed time, cannot deprive the Petitioner of hearing on merits. In most Courts and Tribunals, online filing and electronic filing is now prescribed mode and the Courts are moving towards technologically advance systems. It would be retrograde to opine that online filing, which was complete in all respects, including electronic copy of the order, is not valid filing.

21. In view thereof, the writ petition is partly allowed insofar as the ***OIA No.105-115*** dated 18th April, 2023 and ***OIA No.131*** dated 28th April, 2023.

22. The said appeals are remitted back to the Appellate Authority for

being considered on merits.

23. Insofar as ***OIA No. 132*** is concerned, the online filing is also beyond the statutory prescribed period. Therefore, the writ petition is rejected, insofar as ***OIA No.132*** is concerned.

24. Since there has been a substantial delay in the physical filing, though, the Court is extending the benefit of online filing to the Petitioner, let a lump sum amount of Rs.25,000/- be deposited as costs by the Petitioner with the Delhi High Court Legal Services Committee subject to which the Appellate Authority shall consider the appeals qua OIA 105-115 & OIA 131 on merits.

25. Let this order be communicated to the concerned Appellate Authority by Mr. Singla, Ld. Counsel for necessary information and compliance.

26. The petition is disposed of in above terms. Pending Application(s), if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

DECEMBER 20, 2024
dj/am

(corrected & released on 24th December, 2024)