IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2025

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

W.P.No.16434 of 2023
and
W.M.P.No.15809 of 2023

IDP Education India Private Limited
Plot No.23, KPR Tower, New Door No.2/1,
Subba Rao Avenue, First Street,
College Road, Chennai-600006
Represented by its Head-Taxation-South Asia (HT)
Mrs.Pallavi Sood ... Petitioner

..Vs..

1. Union of India
   Represented by Secretary to Government,
   Ministry of Finance, Department of Revenue,
   North Block, New Delhi-110001.

2. The Commissioner of GST & Central Excise
   Chennai North Commissionerate
   26/1, Mahatma Gandhi Road, Nungambakkam,
   Chennai-600034.

3. Joint Commissioner of GST (Appeals- I)
   26/1, Mahatma Gandhi Road, Nungambakkam,
   Chennai-600034. ... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the Impugned Order -In-Appeal No.25/2023 (GSTA-I)(JC) dated 03.02.2023 passed by the Respondent No.3 that erroneously dismissed the appeal filed by the petitioner as time barred, and quash the same and to direct the respondent No.3 to consider the appeal filed by the petitioner i.e.A.No.226/2022 (GSTA-I)(CN), on its own merits.

For Petitioner	:	Ms.Hema Muralikrishnan for Mr.Karthik Sundaram
For Respondents	:	Mr.Sai Srujan Tayi Senior Standing Counsel and Ms.Pooja Jain Junior Standing Counsel

ORDER

This writ petition has been filed challenging the impugned order dated 03.02.2023 passed by the 3rd Respondent, erroneously dismissing the appeal filed by the petitioner as time barred, and quash the same and to direct the respondent No.3 to consider the appeal filed by the petitioner i.e.A.No.226/2022 (GSTA-I)(CN), on its own merits.

2. The learned counsel for the Petitioner submitted that initially the petitioner filed a refund application on 29.04.2022. Thereafter, Show Cause Notice dated 13.05.2022 was issued to the petitioner on 13.05.2022, for which

the petitioner submitted its reply on 28.05.2022. Subsequently, the respondent passed the rejection order dated 28.06.2022 rejecting the refund application filed by the petitioner. Thereafter, the petitioner filed an appeal electronically (on the common GST portal) on 27.09.2022, annexing a copy of the refund rejection order as 'Annexure A'. When the petitioner attempted to file physical copy of the appeal (which included the certified copy of the refund rejection order) on multiple occasions i.e., on 15.10.2022 and 27.10.2022, the 3rd respondent refused to accept the same. Thereafter, finally on 02.11.2022, the 3rd respondent has accepted the appeal papers submitted by the petitioner. Subsequently, the 3rd respondent passed the impugned order dismissing the appeal filed by the petitioner on the sole ground that the appeal has been filed beyond the statutory period of limitation and is time barred.

3. Further, she would submit that the petitioner has filed an appeal before the 3rd respondent by enclosing the copy of the refund rejection order on 27.09.2022, which is well within the period limitation and subsequent filing of the appeal papers physically is not necessary. Therefore, the question of delay will not arise. Hence, she prays to set aside the impugned order.

4. On the other hand, the learned counsel for the respondents would

submit though the petitioner filed the appeal along with order in original electronically on 27.09.2022, the physical copy of the same was filed belatedly i.e., on 02.11.2022. Therefore, the appeal was rejected on the ground of limitation. The 3rd respondent by citing the relevant provisions of the CGST Act, 2017 has elaborately passed the impugned order and therefore the same does not warrant interfernce.

5. I have given due consideration to the submission made by the learned counsel for the petitioner as well as the respondents and perused the records.

6. The issue involved in this writ petition is as to whether the appeal filed electronically within time limit will save the limitation when the assessee furnished the certified copy of the order in original with delay? To decide this issue, it would be apposite to extract Rule 108 of the Central Goods and Service Tax Rules, 2017 and the same is extracted hereunder:

> **"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 relevant documents,[electronically], and a provisional acknowledgment shall be issued to the appellant

> immediately:
>
> [Provided that a appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with relevant documents, only if-
>
> (i) the Commissioner has so notified, or
>
> (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal, and in such case, a provisional acknowledgment shall be issued to the appellant immediately.]

7. A reading of the aforesaid provision makes it clear that appeal shall be filed in FORM GST-01along with relevant documents within the period of limitation and in case if the same cannot be filed electronically due to non availability of the decision or order to be appealed against on the common portal, the appeal has to be filed manually.

8. In the case on hand, the petitioner has filed the appeal along with order-in-original electronically within the period of limitation. Rule 108, also mandates to file appeal electronically. Thus, subsequent filing of physical copy of the appeal papers along with order-in-original is immaterial for the purpose of limitation. Once the appeal is filed along with order-in-original either electronically or manually, within the period of limitation, the same has be entertained. But, in the present case, though the appeal filed by the petitioner

electronically along with original in original is well within time, the 3rd respondent has erroneously rejected the appeal filed by the petitioner, on the ground of limitation.

9. In such view of the matter, this Court is inclined to set aside the impugned order passed by the 3rd respondent dated 03.02.2023. Accordingly, this Court passes the following order:-

(i) Accordingly, the impugned order dated 03.02.2023 passed by the 3rd respondent is set aside.

(ii) The 3rd respondent is directed to take the appeal on record and pass appropriate orders on merits and in accordance with law, after providing sufficient opportunity to the petitioner, as expeditiously as possible.

10. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

27.03.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

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Krishnan Ramasamy,J.,
arr

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