

### **Appeal filed offline cannot be denied on technical grounds**

The Hon'ble Allahabad Court in *M/s. Yash Kothari Public Charitable Trust v. the State of U.P and Ors. [Writ Tax No. 1027 of 2022 dated January 16, 2023]* has held that taxing authorities cannot stop any assessee from claiming its statutory right of appeal, in the garb of technicality and cannot deny to entertain the appeal filed offline on technical grounds, due to the mistake of the department or the technical glitch in software when an appeal of assessee is not reflected on the portal. Further, directed the Revenue Department to consider the offline appeal of the Petitioner.

#### **Facts:**

M/s. Yash Kothari Public Charitable Trust ("**the Petitioner**") is a registered public charitable trust, constructing a hospital. The Petitioner had claimed certain exemptions, which was rejected by the Revenue Department ("**the Respondent**") vide order dated January 12, 2022 ("**the Impugned Order**"). Further, the Petitioner had reversed certain Input Tax Credit ("**ITC**") through **FORM GSTR-3B** dated February 08, 2022. The Respondent passed a summary order dated January 12, 2022. The Petitioner, however, filed for an appeal but the same was not reflected on the Goods and Services Tax ("**GST**") Portal and the Portal displayed error. The Petitioner, thereafter lodged a complaint before the Respondent about the issue. Subsequently, a rectification order by the Respondent was issued dated April 19, 2022, and recovery proceedings were initiated dated April 21, 2022.

Being aggrieved, this petition has been filed.

The Petitioner contended that the GST portal was not accepting the appeal filed against the Impugned Order and the Respondent was not accepting the offline appeal and has further issued a correspondence dated June 30, 2022 ("**the Impugned Correspondence**") requiring the Petitioner to furnish acknowledgment of online filing of appeal. Further that, Section 107 of

the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) provided that the appeal must filed electronically or otherwise as may be notified by the Respondent however, the Respondent had not notified any other method for filing the appeal.

The Respondent contended that, the appeal against Impugned Order was maintainable but the Petitioner had failed to place the acknowledgement slip due to which, the appeal was unheard and undecided.

**Issue:**

Whether the appeal rejected by the Respondent on technical grounds is sustainable?

**Held:**

The Hon’ble Allahabad High Court in ***Writ Tax No. 1027 of 2022*** held as under:

- Noted that, the Respondent is preventing the Petitioner from consideration of his appeal offline.
- Analyzed the Section 107 of the CGST Act and stated that any person aggrieved by the CGST Act, can prefer an appeal before the Appellate Authority and no embargo has been put upon the filing of such appeal.
- Noted that, the act of the Respondent in not entertaining the appeal offline is stopping the Petitioner from getting its right adjudicated as provided under the CGST Act.
- Relied on the judgement of Hon’ble Andhra Pradesh High Court in the matter of ***Ali Cotton Mill v. Appellate Joint Commissioner (ST) [2022 (56) G.S.T.L. 270 (A.P.)]*** wherein it was held that if any other mode of submission of appeal has not been specified by the Revenue Department, it will be presumed that other mode of submitting such appeal is through offline modes.
- Held that, the Respondent cannot stop the Petitioner from claiming its statutory right, as provided under the CGST Act in the garb of technicality.

- Set aside the Impugned Correspondence.
- Directed the Respondent to consider the offline appeal filed by the Petitioner strictly in accordance with law within a period of one month.

**Relevant Provisions:**

**Section 107 of the CGST Act:**

*“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.*

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

*(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the*

*adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.*

*(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.*

*(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.*

*(6) No appeal shall be filed under sub-section (1), 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 ten 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.*

*Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

*(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.*

*(8) The Appellate Authority shall give an opportunity to the appellant of being heard.*

*(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*

*(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.*

*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.*

*(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*

*(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:*

*Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.*

*(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.*

*(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.*

*(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.”*

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