

Time period to file an appeal starts only when the order is uploaded on GST portal

The Hon'ble Gujarat High Court in ***Gujarat State Petronet Ltd. v. Union of India [R/Special Civil Application No. 15607 of 2019, decided on March 5, 2020]*** quashed and set aside the order passed by the Appellate Authority rejecting the appeal on the ground of limitation. Held that, there was no failure in filing the appeal within the prescribed period of limitation as the period of limitation did not start till time order passed by the Adjudicating Authority was electronically uploaded on the GST portal.

Facts

Gujarat State Petronet Ltd. ("**the Petitioner**") is an undertaking of Government of Gujarat engaged in transportation of gas through pipeline, who filed a refund application on March 21, 2018 for claiming the refund of Integrated Goods and Services Tax ("**IGST**") amounting to Rs. 2,66,55,266/- paid on supplies made to the Special Economic Zone ("**SEZ**").

The Assistant Commissioner ("**the Respondent no. 4**") being Adjudicating Authority examined the refund application and vide order dated August 2, 2018 sanctioned the refund to the tune of INR 2,24,95,641/- and refund amount to tune of INR 41,59,625/- was held to be inadmissible because of non-submission of endorsed invoices in respect of supplies made to ONGC Petro Additions Limited ("**OPAL**") and further handed over physical copy of adjudication order to the Petitioner.

The Petitioner thereafter at various occasions approached the Adjudicating Authority for uploading the order on GST portal, however, the Adjudicating Authority was unable to do so due to certain technical issues. However, the Petitioner, without receiving electronic order filed appeal manually on February 27, 2019 before the Commissioner (Appeals) ("**the Respondent No. 3**") against rejection of specified amount in the refund order dated August 2, 2018. The Respondent No. 3 vide order dated May 1, 2019 ("**Impugned Order**") rejected the appeal filed by the Petitioner on ground of appeal being time barred.

Being aggrieved by the order passed by the Respondent no. 4 and the conduct of the Respondent authorities, the Petitioner has preferred the present petition.

Issue:

Whether the Respondent No. 3 was justified in rejecting the appeal on the ground of limitation or not?

Held:

The Hon'ble Gujarat High Court in *R/Special Civil Application No. 15607 of 2019, decided on March 5, 2020* held as under:

- Observed that, the appeal is required to be filed in electronic mode only and if any other mode is to be prescribed then the same is required to be notified by way of a notification. There is nothing on record to show that any notification has been issued for manual filing of an appeal. In such circumstances, though the physical copy of the adjudication order was handed over to the Petitioner, the time period to file appeal would start only when the order is uploaded on the GST portal. Without the order being uploaded, the Petitioner could not file the appeal and therefore, the contention raised on behalf of the Respondents that the uploading of the order and filing of the appeal are two different processes, is not tenable in law.
- Noted that, filing of the appeal and uploading of the order are intertwined activities. The order is required to be uploaded online so that the appeal can be filed electronically as per the mandate of the provisions of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) and the Central Goods and Services Tax Rules, 2017 (“**CGST Rules**”). However, there is no provision or procedure to file the appeal manually. In such circumstances, there was no failure on part of the Petitioner to file the appeal within the prescribed period of limitation as the period of limitation did not start till the order passed by the adjudicating authority was uploaded on the GST portal.
- Held that, merely because the Petitioner has filed the appeal manually after exhausting all the efforts to ensure filing of the appeal in proper and legal manner, the Impugned Order rejecting such appeal on the ground of limitation is not sustainable as the Petitioner cannot be penalised for lack of clarity of the provision when the new law is enacted. The Petitioner has taken all the steps for proper filing of the appeal immediately after issuance of the order passed by the adjudicating authority till the filing of the appeal. Therefore, the Respondent No. 3 was not justified in rejecting the appeal on the ground of limitation and thereby depriving the Petitioner to submit its case on merits.

- Quashed and set aside the Impugned Order passed by the Respondent no.3 and stated that the delay in preferring the appeal manually is ordered to be condoned.
- Remanded back the matter to the Respondent No. 3 to decide the same afresh de novo on merits after giving adequate opportunity of hearing to the Petitioner.

Relevant provisions:

Section 107(1) of the CGST Act:

“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.”

Rule 108 of CGST Rules:

“Appeal to the Appellate Authority

(1) An appeal to the Appellate Authority under subsection (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.”

Rule 142(5) of the CGST Rules:

“142. Notice and order for demand of amounts payable under the Act

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.”

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