

TAX INFO

Dated 11/07/2022

Latest update on GST Law: **To file an appeal, the filing of downloaded copy of order from GST Portal instead of the certified copy is sufficient compliance due to the COVID pandemic as given by Orissa High Court.**

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Name of Petitioner	M/s. Atlas PVC Pipes Limited
Name of Respondent	State Of Odisha
Court	Orissa High Court
Date of Judgement	29.06.2022
Appeal No.	W.P.(C) No. 14163 of 2022

Brief Facts of the Case Law:

The order dated 20.01.2021 was raised upon petitioner demanding Rs.8,20,042/- pertaining to the tax period from 1st April, 2019 to 31st March, 2020. Being aggrieved, on 21.04.2021 the Petitioner filed an appeal under Section 107 of the OGST Act and it deposited Rs.39,964/- being 10% of the tax in dispute in terms of Section 107(6), but could not submit the certified copy of the impugned order along with the appeal memo. Self-attested hard copies of the documents including copy of the impugned order as made available to it in the GST web portal were furnished to the Appellate Authority. The Appellate Authority issued a notice dated 13.05.2022 directing the Petitioner to submit the certified copy on or before 21.05.2022. The said notice dated 13.05.2022 was served on 20.05.2022, the Petitioner applied for and obtained certified copy of the required document on 21.05.2022. On 22.05.2022, being Sunday holiday, submission of the same could only take place on 23.05.2022. However, the Appellate Authority refused to receive the same on the plea that he had already passed the order of rejection of appeal and uploaded the same in the GST portal on 23.05.2022.

Contention of the Applicant:

The hyper-technical approach of the Appellate Authority rendered the Petitioner remediless. The Appellate Authority ought to have taken into consideration the COVID-19 pandemic situation that persisted during the relevant period.

Observations & Decision of the Court:

Fact available on record reveals that copy of the impugned order as made available to the Petitioner formed part of the Memo of Appeal. It is also apparent that the Petitioner had only one day left for compliance from the date of service of the said notice dated 13.05.2022. Accordingly, the Petitioner applied for certified copy of the impugned order on the very next day of receipt of aforesaid notice. Thus, it would have been better on the part of the Appellate Authority to verify the date of service of notice dated 13.05.2022 on the Petitioner before passing order dated 23.05.2022 rejecting the Memo of Appeal. The Petitioner filed the appeal invoking Section 107 on 21.04.2021. The statutory prescribed period for preferring appeal fell within the extended period in consonance with Finance Department Notification dated 07.05.2021 read with Judgment(s)/Order(s) of Hon'ble Supreme Court rendered **in the case of In Re: Cognizance For Extension Of Limitation, SMW(C) No. 3 of 2020**. If present case is considered in the light of Order dated 10.01.2022 of the Hon'ble Apex Court, the petitioner is entitled to the benefit of exclusion of limitation of 7 days as stipulated in Rule 108(3) of the OGST Rules inasmuch as the certified copy of the Order dated 20.01.2021 being obtained on 21.05.2022 and offered to the Appellate Authority on 23.05.2022 for consideration in connection with the defect pointed out vide notice dated 13.05.2022, the same fell well within the 90 days period granted by the Hon'ble Supreme Court in the Order dated 10.01.2022. The requirement to furnish certified copy of the impugned order within seven days of filing of appeal is provided as a procedural requirement. On default in compliance of a procedural requirement, merit of the matter in appeal should not have been sacrificed. 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 ought to have been treated as mere technical defect.

Therefore, the impugned Order dated 23.05.2022 rejecting the appeal on the ground of non-submission of certified copy of the impugned was set aside. The appeal was restored to file of the Joint Commissioner of State Tax (Appeal) and in that event the Appellate Authority shall proceed to decide the appeal on merits and make endeavour to dispose of the same by a reasoned order in accordance with law. **The co-ordinate Bench of this Court in the case of Shree Jagannath Traders Vs. Commissioner of State Tax, Odisha, Cuttack, W.P.(C) No.15061 of 2021, vide Order dated 07.06.2021 clarified that the Appellate Authority may adopt a liberal approach considering that these are times of restricted functioning of Courts and tribunals due to the COVID pandemic. "As long as the appeal is accompanied by an ordinary downloaded copy of the order appealed against, verified as a true copy by the Advocate for Appellant, delay in filing such certified copy, the Appellate Authority may, as long as the restricted functioning of the Court and Tribunals due to the COVID pandemic continues, be condoned."**

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