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Judgment No.: 119
Dt.: 27-04-2024



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Judgment Deals With

Section/Rule	Rule 108
Authority	Gujarat High Court
Case Name	Otsuka Pharmaceutical India Pvt. Ltd. VS Union Of India & ORS.
Dated	27 th March, 2024

Brief Facts of the Case:

The petitioner is engaged in the manufacture and export of pharmaceuticals products. The petitioner exercised option of exporting goods without payment of tax and seeking refund of unutilised input tax credit as permitted by Section 16 of the IGST Act, 2017.

The petitioner made an online application for refund on GST portal within the stipulated time limit in the month of August, 2021. After issuance of show-cause notice to the petitioner, the adjudicating authority held that there was difference between the value of exports as mentioned in the invoice and the shipping bill. The petitioner filed reply to such show cause notice, however the adjudicating authority rejected the submission made by the petitioner that refund is required to be provided as per the shipping bill and passed the Order-in-Original sanctioning partial amount only and rejected the part of the refund claim.

The petitioner, being aggrieved, preferred appeals online under Section 107 of the CGST Act. The petitioner was thereafter called upon to submit the certified copies of the Order-in-Original. The petitioner submitted such copies during the pendency of the appeal, however the appellate authority, calculated the period of delay by observing that the petitioner failed to submit certified copy of the decisions or orders within the period as stipulated under Rule 108 of the Rules and considered the same delay as an inordinate delay ranging from 71 days to 106 days and decline to entertain the appeals on the ground of delay.

Being aggrieved, the petitioner challenged impugned order dated 31.01.2023 rejecting the appeals of the petitioner on the ground of delay.

Contention of the Petitioner:

The Rule 108(3) of the Rules would not apply as the petitioner has preferred online appeals on the basis of Order-in-Original uploaded by the adjudicating authority and therefore, the date of submission of certified copy by the petitioner would not be the date of filing of appeal.

Reliance was placed on the Minutes of 48th Meeting of the GST Council dated 17th December, 2022 which provided for amendment in Rule 108 as a clarificatory amendment, which provides that the period of limitation could be considered only if the order is passed manually and not uploaded on the common portal and the same is not available to the appellate authority on the common portal.

In such cases, non-submission of the certified copy by the appellant restricts the appellate authority from entertaining the same. Therefore, the entire basis of the order passed by the appellate authority considering the date of submission of the certified copy by the petitioner to be considered as actual date of filing of appeal is without any basis.

Contention of the Authority:

The appellate authority has simply followed the Rule 108(3) in letter and spirit.

Findings & Decision of the Court:

On perusal of the above Rule 108, it is clear that the petitioner is required to submit decision or order appealed against within 7 days of filing of appeal and final acknowledgment indicating appeal number is to be issued in Form GST APL-02 by the appellate authority. Therefore, literally applying Rule 108(3) by the appellate authority was justified in rejecting the appeals on the ground of delay.

However, As the GST Council has agreed to recommendations of the Law Committee which provides that when an order which is appealed against is issued or uploaded on the common portal and the same can be viewed by the appellate authority, requirement of submission by the appellant of a certified copy of such an uploaded order to vouch for its authenticity would be insignificant in view of availability of the order online. Therefore, considering such recommendation, amendment which is clarificatory in nature, has come into effect from 26th December, 2022 on the statute.

In view of the above amendment which would have a retrospective effect as the same is a clarificatory in nature and therefore, the impugned order passed by the appellate authority rejecting the appeal on the ground of delay would not survive.

Thus, the impugned order was quashed and set aside and the matter was remanded back to the appellate authority to pass a fresh de novo order on merits after giving opportunity of hearing to the petitioner.

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