

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.15061 OF 2021

AFR

*M/s. Shree Jagannath Traders* .... *Petitioner*  
Mr. V. Narasingh, Advocate

-versus-

*Commissioner of State Tax Odisha,*  
*Cuttack and others* .... *Opp. Parties*

Mr.Sunil Kumar Mishra,  
Standing Counsel for Revenue

**CORAM:**  
**THE CHIEF JUSTICE**  
**JUSTICE K.R. MOHAPATRA**

**ORDER**  
**07.06.2021**

**ORDER NO.**

2. 1. This matter is taken up by video conferencing mode.
2. The short point for determination in the present writ petition is whether the Appellate Authority under the OGST Act, 2017, was justified in dismissing the Petitioner's appeal, by the impugned order dated 10<sup>th</sup> March, 2021, on the grounds that the appeal was not presented within the time prescribed under law?
3. Notice. Mr. Sunil Kumar Mishra, Standing Counsel for the Revenue accepts notice for the Opposite Parties.
4. The basic facts are not in dispute. Admittedly, the Adjudicating Authority passed the impugned order on 18<sup>th</sup> August, 2020 and

uploaded it on the same day. It is not also in dispute that the last date for the filing of the appeal against the said order was 17<sup>th</sup> November, 2020. It is further admitted that the Petitioner did, in fact, file the appeal on 13<sup>th</sup> November, 2020 electronically, accompanied by a downloaded copy of the order appealed against.

5. Under Rule 108 (3) of the OGST Rules, 2017, the appeal had to be accompanied by a certified copy of the order appealed against. This had to be submitted within seven days of the filing of the appeal. Under the proviso to Rule 108(3) if the certified copy is submitted within seven days of the filing of the appeal, then the date of filing of the appeal would be the date of the issue of the provisional acknowledgment. If it is filed after seven days, the date of filing of the appeal would be the date of submission of such certified copy.

6. As it transpires, in the present case, the Petitioner could furnish a certified copy of the order of appealed against only on 9<sup>th</sup> March, 2021, i.e., more than three months and 21 days after the filing of the appeal. According to the Appellate Authority, i.e., the Additional Commissioner of State Tax (Appeal), Balasore, this delay could not be condoned and, therefore, the appeal itself was dismissed as not having been preferred in time.

7. This Court has heard the submissions of Mr. V. Narasingh, learned counsel for the Petitioner and Mr. Mishra learned counsel for the Revenue.

8. Section 107(1) and Section 107 (4) of the OGST Act, 2017, which are relevant for the present petition, read as under:

**“SECTION 107 (1)** Any person aggrieved by any decision or order passed under the Odisha Goods and Service Tax Act by any 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.

**SECTION 107 (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.”

9. It is seen that the Appellant had to show the Appellate Authority *“the appellant was prevented by sufficient cause from presenting the appeal within a period of three months from the date of the impugned order.”* In the present case, it is not in dispute that the Petitioner in fact filed the appeal within a period of three months. It is only on the account of the appeal not being accompanied by the certified copy of the order appealed against, within a period of seven days, that it has been rejected on the ground of delay.

10. Mr. Narasingh, learned counsel for the Petitioner, points out that while the appeal was accompanied by the downloaded printed copy of the order appealed against at the time of filling of the appeal, it was not accompanied by the certified copy thereof at that stage since the Lawyer who had filed the appeal was in self quarantine as he had come into contact with a client who had tested positive for Covid-19.

11. The difficulties faced by lawyers and litigants in the Covid affected times, where the functioning of the Courts and Tribunals is limited in applying for and obtaining certified copies of orders is generally known. Acknowledging this reality, the explanation offered for the delay in furnishing such certified copy ought to have been accepted by the Appellate Authority and the delay in that regard ought to have been condoned. Also the wording of Section 107 (4) is such that the authority is not precluded from condoning a delay of a longer period.

12. Considering that the explanation offered by the petitioner is a plausible and not an unreasonable one, especially in these Covid times, and further considering that a downloaded copy thereof was in fact submitted along with the appeal which was otherwise filed within time, this Court is of the view that the mere delay in enclosing a certified copy of order appealed against along with the appeal should not come in the way of the Petitioner's appeal for being considered on merits by the Appellate Authority. This is a case of substantial compliance and the interests of justice ought not to be constrained by a hyper technical view of the requirement that a certified copy of the order appealed against should be submitted within one week of the filing of the appeal. To repeat, in these Covid times when there is a restricted functioning of Courts and Tribunals in general, a more liberal approach is warranted in matters of condonation of delay, which cannot be said to be extraordinary.

13. Accordingly, the impugned order dated 10<sup>th</sup> March, 2021 of the Appellate Authority rejecting the appeal on the ground of delay, is hereby set aside. The appeal is now restored to the file of the Additional Commissioner of State Tax (Appeal), Balasore and is directed to be listed there for directions on 5<sup>th</sup> July, 2021 at 11 am. The Appellate Authority will proceed to decide the appeal on merits and endeavour to dispose it of by a reasoned order in accordance with law not later than 4<sup>th</sup> October, 2021.

14. Before parting with the case, this Court must note that it was brought to its attention that in other similar matters, the Appellate Authority has declined to condone the delay in the appellants filing a certified copy of the order appealed against. It is 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 the Appellant, the delay in filing such certified copy, subject to it not being extraordinary, the Appellate Authority may, as long as the restricted functioning of the Court and Tribunals due to the Covid pandemic continues, be condoned.

15. The writ petition is disposed of in the above terms.

16. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the

concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25<sup>th</sup> March, 2020 as modified by Court's Notice No.4798, dated 15<sup>th</sup> April, 2021.

*(Dr. S. Muralidhar)*  
*Chief Justice*

*( K.R. Mohapatra)*  
*Judge*

*s.s.satapathy*

