

Appeal cannot be dismissed merely due to procedural requirements- Orrisa HC

9 August 2022



Summary

The Orissa High Court (HC) observed that the Goods and Service Tax law¹ has not prescribed the condonation of delay in case the petitioner fails to submit a certified copy of the order in the appeal. Further, the law provides only a procedural requirement to furnish a certified copy of the impugned order within seven days of filing the appeal. The HC further stated that if the present case is considered in light of the order of the Hon'ble Supreme Court (SC), the petitioner is entitled to the benefit of exclusion of limitation of seven days. The court considered the judgements and instruction/ clarification issued during the COVID-19 pandemic and stated that the appellate authority (AA) has not exercised its power in a proper manner. Further, the petitioner has pursued the matter diligently, hence it cannot be termed indolent. Therefore, the HC restored the appeal and directed the AA to dispose of the appeal by a reasoned order.

Facts of the case

- The petitioner² is engaged in the supply of pipes. The department had initiated proceedings³ upon the petitioner and thereby issued a demand order for the recovery of tax along with applicable interest and penalty.
- The aggrieved petitioner filed an appeal in electronic mode and pre-deposited the prescribed amount⁴. However, it failed to submit the certified copy of the impugned order along with the appeal memo.
- Thereafter, the petitioner furnished self-attested hard copies of documents including a copy of the impugned order as available on the GST portal. However, regardless of the above submissions, it received a notice after around one year from the date of filing the memo of appeal, from the AA indicating that the petitioner was required to submit a certified copy of the order within seven days of filing of the appeal.
- The petitioner applied for and obtained the certified copy of the order, as per the demand in the notice. However, the AA

has denied accepting such an order since it had already passed the order for rejection of appeal which was uploaded online on the GST portal.

- The petitioner submitted that the approach of the AA was hyper-technical. It also could not approach the appellate tribunal since the same had not been constituted.

Orissa HC observations and ruling⁵:

- **Compliance with rules of natural justice:** There is nothing on record as to whether the AA had ever informed the petitioner about the next date of the proceedings. The HC stated it as an essential condition for compliance with the rules of natural justice.
- **Submission of a certified copy of the order is the procedural requirement:** The HC found that the condonation of delay is not prescribed under the Act in case the petitioner fails to submit the certified copy of the impugned order in the appeal memo. Further, there is no provision restricting

¹ Rule 108(3) of CGST Act 2017

² M/s Atlas PVC Pipes Private Limited

³ Section 74 of OGST Act 2017

⁴ Section 107 of CGST Act 2017

⁵ W.P.(C) No. 14163 of 2022 dated

application⁶ in context of the supply of a certified copy within the stipulated period. Besides, the requirement to furnish a certified copy of the impugned order within seven days of the filing of an appeal is only a procedural requirement and due to default in such compliance, the merit in the appeal could not be sacrificed.

- **Statutorily prescribed period for filing appeal fell within the extended period:** The HC observed the memo of appeal and stated that the petitioner has filed the appeal one day after passing the order. The statutorily prescribed period for preferring appeal fell within the extended period in consonance with the Finance Department Notification⁷ read with the judgement of the SC⁸.
- **Mere technical defect:** The HC relied on the judgement of the Orissa HC⁹ wherein it had been held that mere delay in enclosing a certified copy of the order against which an appeal is filed is not a sufficient cause for not considering an appeal. In the present case, the petitioner had already submitted the order copy available on the GST portal, while filling the memo of appeal. Thus, the non-submission of a certified copy is to be treated as a mere technical defect.

Our comments:

Earlier, the Orissa High Court in the case of Shree Jagannath Traders¹⁰ had held that the interests of justice should not 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.

Similarly, the Orissa High Court in the case of Shree Udyog¹¹ had held that the appellate authorities should adopt a liberal approach in matters of condonation of delay considering the restricted functioning of courts and tribunals during the pandemic times.

The present ruling is also in line with the above rulings and shall set precedence in similar matters.

⁶ Of Section 5 of the Limitation Act, 1963

⁷ 13898-FIN-CT1-TAX-0002/2020 [SRO No.129/2021], dated 7 May 2021

⁸ In case of Cognizance for extension of Limitation, SMW(C) No. 3 of 2020.

⁹ in case of Shree Udyog W.P.(C) No.14887 of 2021 dated 10 June 2021

¹⁰ W.P.(C) No.15061 of 2021 dated 7 June 2021

¹¹ W.P.(C) No.14887 of 2021 dated 10 June 2021

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