

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 15607 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J.B.PARDIWALA****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

GUJARAT STATE PETRONET LIMITED
Versus
UNION OF INDIA THROUGH SECRETARY

Appearance:

MS. KANUPRIYA BHARGAV WITH MS DIVYA BHARADWAJ AND MR MAULIK NANAVALI FOR MS NIYANT R BHIMANI(8000) for the Petitioner(s)
No. 1

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 2,3,4
NOTICE SERVED BY DS(5) for the Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 05/03/2020**ORAL JUDGMENT**

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Rule returnable forthwith. Learned Standing Counsel Shri Nirzar Desai waives service of rule on behalf of the respondents.
2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for the following reliefs :

“(a) To issue a writ of certioari or any other appropriate writ, order or direction in the nature thereof for quashing the impugned order dated 01.05.2019 passed by the respondent no.3, that erroneously rejected the appeal filed by the petitioner on the ground of being beyond limitation period in violation of section 107 of the CGST Act read with rule 108 of the CGST Rules and remand the matter to the adjudicating authority to decide the matter on merits of the case.

“(b) To pass any other order or orders in favour of the petitioner, including costs of this petition as this Hon'ble Court deems fit and proper in the facts and circumstances of the case.”
3. Brief facts of the case are that the petitioner is an undertaking of Government of Gujarat incorporated under the provisions of the Companies Act, 1956 and is engaged in the transportation of gas through pipeline. The petitioner is registered under the provisions of the Central Goods and Service Tax Act, 2017 (“CGST Act” for short).

3.1) The petitioner had filed a refund application on 21st March, 2018 for claiming the refund of Integrated Goods and Service Tax (for short “IGST”) amounting to Rs. 2,66,55,266/- paid on supplies made to the Special Economic Zone (for short “SEZ”).

3.2) The respondent no.4-adjudicating authority examined the refund application and issued a deficiency memo dated 11th April, 2018 directing the petitioner to cure the defects and submit the endorsed invoices in respect of the supplies made to one ONGC Petro Additions Limited (for short “OPAL”). It is the case of the petitioner that despite continuous reminders by the petitioner and the OPAL for endorsement of the invoices, the SEZ jurisdictional authority was neither endorsing the invoices for IGST amounting to Rs.41,59,625/- nor confirming any time frame. The petitioner therefore, vide letter dated 18th June, 2018 requested the adjudicating authority to process the remaining refund.

3.3) The respondent no.4 issued a show cause notice dated 5th July, 2018 for rejection of the refund amount to the tune of Rs. 41,59,625/- since copy of invoices in respect of the supplies made to the OPAL were not submitted.

3.4) The petitioner replied to the said show cause notice by its letter dated 6th July, 2018 stating that the amount of

refund as stated in the notice was pertaining to the supply made to the OPAL for which invoices have not been endorsed by the SEZ authority despite several reminders.

3.5) Pursuant to the refund application, the adjudicating authority sanctioned refund to the tune of Rs.2,24,95,641/- on 2nd August, 2019 however, refund amount to the tune of Rs.41,59,625/- was held to be inadmissible because of the non submission of the endorsed invoices for the supplies made to OPAL.

3.6) On 2nd August, 2018, the petitioner received the endorsed copies of the invoices and thereafter, the petitioner immediately approached the adjudicating authority for taking on record the endorsed copy of invoices. However, the adjudicating authority did not take the documents into consideration on the ground that the refund order has already been signed and hence, no amendment can be made in the same.

3.7) 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.

3.8) It is the case of the petitioner that the adjudicating authority advised the petitioner to file a fresh refund application and generate fresh application reference number, however, the petitioner could not do so as the

GST portal does not allow filing of refund application for same month twice when the reason for refund is same and particularly, when the first refund application is not closed. It is the case of the petitioner that on advice of the adjudicating authority, the petitioner even approached the GST Seva Kendra, Ahmedabad for filing fresh application in relation to refund of IGST paid on the supplies made to the OPAL. The petitioner also approached the GST Seva Kendra at New Delhi with the same issue; however the issue of petitioner was never resolved. The petitioner even lodged the grievance on the GST portal on 6th August, 2018 and on 16th August, 2018, however, the grievances remained unresolved.

3.9) The petitioner thereafter, submitted a letter dated 15th November, 2018 along with requisite documents and requested for refund of Rs.41,59,625/-.

3.10) The adjudicating authority replied to the above letter by its letter dated 29th November, 2018 stating that the refund application has already been processed and accordingly, the refund was sanctioned to the tune of Rs. 2,24,95,641/.

3.11) The petitioner however, without receiving the electronic order filed a manual copy of the appeal on 27th February, 2019 before the respondent no.3 against the refund order dated 2nd August, 2018. Subsequently, the petitioner was invited for the personal hearing on 28th

March, 2019 and was asked to submit the copy of grievance that was lodged earlier in relation to the subject matter of the appeal. The petitioner accordingly vide letter dated 29th March, 2019 submitted the details of grievances lodged.

3.12) The respondent no.3 passed the order on 1st May, 2019 rejecting the appeal filed by the petitioner on the ground of the appeal being time barred.

3.13) Being aggrieved by the impugned order and the conduct of the respondent authorities, the petitioner has preferred the present petition.

4. Learned advocate for the petitioner Mr. Kanupriya Bhargava with learned advocate Mr. Divya Bhardwaj and learned advocate Mr. Maulik Nanavati for Mr. Niyant Bhimani for the petitioner submitted that the appeal is required to be filed under section 107 of the CGST Act read with Rule 108(1) of the CGST Rules wherein it has been provided that appeal can be filed electronically only or in the manner notified by the Commissioner of GST. It was submitted that the petitioner did not receive electronic copy of the order dated 2nd August, 2018 passed by the adjudicating authority, and therefore, the petitioner could not file the appeal electronically as per the prescribed procedure laid down under the CGST Act and the CGST Rules. It was submitted that the limitation period of three months prescribed under section 107 of the CGST Act

would start only from the date of communication of order to the petitioner in electronic form. In such circumstances, the Commissioner (Appeals) was not justified in rejecting the appeal on the ground of limitation.

4.1) It was submitted that in absence of any other procedure notified for filing the appeal, the only course of preferring the appeal was to file it by electronic mode and in such circumstances as the order passed by the adjudicating authority was not uploaded, the appeal could not be filed within three months from the date of passing of the order. It was therefore, prayed that the respondents-appellate authority be directed to hear the appeal on the merits.

4.2) Learned advocate for the petitioner submitted that as the GST law is recently introduced and there was no clarity with regard to the procedure to be followed in the said law, the petitioner should not be penalized for failures and inaction on part of various governmental authorities and other technological glitches.

4.3) Learned advocate for the petitioner invited the attention of the Court to the fact that there has been complete failure on part of the jurisdictional SEZ authority to endorse the invoice in the timely manner inspite of diligent follow-ups by the petitioner. When the petitioner was advised to file the fresh application for refund, the petitioner approached various authorities under the GST

and even lodged the grievances on the GST portal which was not resolved and therefore, such inactions and failures on part of the Government authorities causing delay cannot be held against the petitioner for rejection of the legitimate refund claim.

4.4) It was pointed out that the order passed by the adjudicating authority on the refund application filed by the petitioner has not been served nor it is uploaded on the GST portal and due to non availability of the electronic copy of the refund order, the petitioner could not prefer the appeal in the electronic form as required under the GST laws. It was also pointed out that the petitioner approached on various occasions to the adjudicating authority for uploading the order in GST portal, however, the adjudicating authority was unable to do so due to certain technical issues and the petitioner was advised to file a fresh refund application and generate fresh application reference number but the same also could not be done by the petitioner as the GST portal did not allow for filing the refund application for the same month twice when the reason for refund is same and more particularly, when the first refund application was not closed by the authority. The petitioner even approached the GST Seva Kendra Ahmedabad for filing fresh application in relation to refund of IGST paid on supplies made to the OPAL as well as the GST Seva Kendra, New Delhi, however, the grievance of the petitioner was never resolved.

4.5) Learned advocate for the petitioner submitted that the petitioner is a public sector undertaking and has clear intention to abide the laws by following the procedures under the CGST Act and delay that has resulted in filing of the appeal against the impugned order was solely due to the bona fide belief of the petitioner that appeal can only be filed electronically in terms of provisions of the GST laws. It was therefore, submitted that in such circumstances, there was a delay in filing the appeal by the petitioner. Learned advocate for the petitioner further submitted that section 109 of the CGST Act provides establishment of National Bench, Regional Bench and State Bench to hear the appeals against the order passed by the appellate authority, but at present, there is no such Bench established in Gujarat under GST laws and therefore, the petitioner has approached this Court by preferring this petition with the aforesaid prayers.

5. On the other hand, learned Standing Counsel Mr. Nirzar Desai vehemently opposed the petition relying upon the averments made in the affidavit in reply filed on behalf of the respondents no. 2 to 4 and raised the preliminary objection regarding the maintainability of the petition as the petitioner has an alternative efficacious remedy to challenge the order passed by the appellate authority. It was submitted that the contention of the petitioner that the appeal could not be filed electronically before the Commissioner (Appeals) due to non availability of the order passed by the Adjudicating Authority as the same was not uploaded on the GST portal cannot be accepted because

the electronic filing of appeal is an entirely different process which the petitioner could have applied as it requires the details of adjudicating order which was already in the possession of the petitioner.

5.1) It was further submitted that the efforts made by the petitioner to file a revised refund application and the issue of technical glitches raised by it, cannot be the reason or the excuse for not filing the appeal within the stipulated time period. It was submitted that the petitioner filed the appeal beyond a period of three months prescribed under section 107 and also beyond the period of one month extension which can be granted by the appellate authority as the appeal was filed after five months and 23 days from the date of the order passed by the adjudicating authority which was admittedly beyond the period of limitation prescribed under sub-sections (1) and (4) of section 107 of the CGST Act. It was therefore, submitted that the appellate authority has no power to condone the delay beyond the period of four months as per the provisions of the Act and therefore, the appeal was rightly rejected.

6. Having heard the learned advocates for the respective parties and having gone through the materials on record, the only short question which arises is whether the appellate authority was justified in rejecting the appeal on the ground of limitation or not?
7. In order to answer the above question arising in this petition, it would be necessary to refer to the relevant

provisions of the CGST Act and the CGST Rules which are as under :

“107 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.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(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.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid- in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing: Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.”

CGST RULES:

“Rule 108 - Appeal to the Appellate Authority

(1) An appeal to the Appellate Authority under [sub-section \(1\) 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.”

8. On perusal of the above provisions, it is apparent 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. Moreover, 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 Act and the 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. 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. From the facts on record, it also emerges that 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 appellate authority was not justified in rejecting the appeal on the ground of limitation and thereby depriving the petitioner to submit its case on merits.

9. In view of above, taking into consideration the peculiar facts of the case, the impugned order passed by the appellate authority is required to be quashed and set aside by condoning the delay in filing of the appeal manually by the petitioner in absence of availability of the order passed by the adjudicating authority on the GST portal.
10. For the foregoing reasons, the petition succeeds and is accordingly allowed. Impugned order dated 1st May, 2019 passed by respondent no.3 the Commissioner (Appeals) of Goods and Service Tax, Ahmedabad is hereby quashed and set aside and the delay in preferring the appeal manually is ordered to be condoned and the matter is remanded back to the respondent no.3 - appellate authority to decide the same afresh de novo on merits after giving adequate opportunity of hearing to the petitioner.
11. Rule is made absolute to the aforesaid extent. No order as to costs.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR