

PRIMARY DETAILS

Main Number	WP 23426/2023	SR Number	WPSR 36266/2023
Petitioner	M/S. NEOSPARK DRUGS AND CHEMICALS PRIVATE LIMITED	Respondent	THE ADDITIONAL COMMISSIONER OF CENTRAL TAX
Petitioner Advocate	C SANJEEVA RAO	Respondent Advocate	SANTHI CHANDRA Jr. Standing Counsel for CBIC
Case Category	NON-SERVICE	District	GUNTUR
Filing Date	04/09/2023	Registration Date	05/09/2023
Listing Date	14/09/2023	Case Status	DISPOSED
Disposal Date	14-09-2023	Diposal Type	ALLOWED NO COSTS
Purpose	ADMISSION	Scrutiny Officer name	kvk1
Hon'ble Judges	The Honourable Sri Justice U.DURGA PRASAD RAO,The Honourable Sri Justice A V RAVINDRA BABU		

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO  
AND  
HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

**WRIT PETITION No.23426 of 2023**

**ORDER:** *(per UDPR, J)*

The challenge in this writ petition is to the order in Appeal No.06/2023(G) GST, dated 30.06.2023 passed by the Additional Commissioner of Central Tax (GST-Appeals)/1<sup>st</sup> respondent, rejecting the appeal filed by the petitioner challenging the assessment order O.C.No.120/2022-2023, dated 20.07.2022, passed by the 2<sup>nd</sup> respondent, on the ground that the appeal was filed with a delay beyond the condonable period.

2. Heard learned counsel for petitioner, Sri C.Sanjeeva Rao and Smt.Shanthi Chandra, learned Jr.Standing Counsel for CBIC for the respondents 1 to 3 and learned Deputy Solicitor General for the 4<sup>th</sup> respondent.

3. As can be seen, the 1<sup>st</sup> respondent observed that the assessment order was passed on 20.07.2022 by the 2<sup>nd</sup> respondent and the appeal was filed online on 26.09.2022 but the physical copies of the appeal were received by the office of the 1<sup>st</sup> respondent only on 24.04.2023 and since the appeal in all

respects ought to have been filed by 19.10.2022 and as such, there was a delay of about six months five days in between 26.09.2022 and 24.04.2023, which is beyond the condonable period under Section 107 of CGST Act and accordingly, rejected the appeal.

4. Learned counsel for petitioner would submit that admittedly the appeal was filed on 26.09.2022 online mentioning therein the particulars of the assessment order dated 20.07.2022, as the said assessment order was already uploaded by the Department on the official website and therefore, he mentioned the particulars of the said order. To that effect, learned counsel filed a copy of the screen shot showing the date of assessment order as 20.07.2022 and Order No.OIO No.01/2022-23-GST. Learned counsel would thus submit that the petitioner has complied with the requirement of filing the appeal online and the copy of the order. He would further submit that the petitioner filed the physical copies of appeal along with the required documents on 24.04.2023. Taking the said date, the 1<sup>st</sup> respondent held that the appeal was beyond the condonable period. Learned counsel for petitioner would further submit that as per Rule 108, appeal could be filed either electronically or otherwise and since the petitioner has filed the appeal electronically on

26.09.2022 and made a reference with regard to the impugned assessment order also therein, the 1<sup>st</sup> respondent ought to have considered the same and held that the appeal was filed well within time. However, taking the date of filing of the physical copies i.e., 24.04.2023, appeal was rejected holding that it was beyond the condonable period which is unjust.

5. Learned Jr.Standing Counsel for respondents 1 to 3 would submit that though the petitioner filed the appeal online on 26.09.202, however, following the mandate of filing certified copy, he has not produced an online certified copy. However, he only mentioned the date of assessment order therein and thereby, has not fulfilled the conditions. He filed the physical copies of appeal and the assessment order copy only on 24.04.2023 which was far beyond the condonable period and therefore, the 1<sup>st</sup> respondent has rightly rejected the appeal.

6. We heard the above respective contentions of both the learned counsel.

7. The point for consideration is ‘Whether the impugned rejection order is sustainable in the eye of law?’.

8. Admittedly, in this matter, the assessment order was passed on 20.07.2022 and the same was uploaded on the official website on the same date. It is a further admitted fact that the petitioner filed the appeal electronically on 26.09.2022, which was within the 90 days as prescribed under Section 107(1) of CGST Act. Now the bone of contention is with regard to the uploading of the certified copy. According to the petitioner, since the assessment order was already hoisted on department website, he made a reference of the order number with OIO No.01/2022-23-GST and with order No.3CEEYK0402S07220015, dated 20.07.2022 and thus, substantially complied with the requirement.

9. On perusal of the copy of the screen shot filed along with the material papers, we find some force in the submission of learned counsel. Since admittedly the copy of the assessment order dated 20.07.2022 was already placed on the department website, the petitioner gave the reference of the said order while filing the appeal electronically. Therefore, we find force in the submission that the requirement was substantially met. Therefore, the 1<sup>st</sup> respondent ought to have taken the date of filing of the appeal as 26.09.2022 for all practical purposes. However, the 1<sup>st</sup> respondent

took the date of filing as 24.04.2023, as on the date the appeal was filed along with the documents physically. In our considered view, this approach of the 1<sup>st</sup> respondent cannot be accepted. Electronical filing of the appeal is a facilitation given to the assesseees. That being so, the copy of the impugned order which was already available on the web can be mentioned for easy reference.

8. Accordingly, this writ petition is allowed and the appeal filed by the petitioner in electronic mode is held as well within time and the matter is remitted back to the 1<sup>st</sup> respondent to register the appeal and decide the same in accordance with the governing law and rules expeditiously. No costs.

As a sequel, interlocutory applications pending, if any, in this case shall stand closed.

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**U.DURGA PRASAD RAO, J**

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**A.V.RAVINDRA BABU, J**

**14.09.2023**  
**SS**