IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 14806 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA sd/-
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI sd/-

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Approved for Reporting	Yes	No
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ADINATH RICE MILL & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
UCHIT N SHETH(7336) for the Petitioner(s) No. 1,2
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 1,3
MR. ARCHIT P JANI(7304) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 03/08/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since a short issue is involved, the matter is taken up for final hearing.

2. The present writ petition is prayed for quashing and setting aside the impugned order-in-appeal dated 11.06.2024 passed under Section 107 of the Central Goods and Services Tax Act, 2017 (for short 'the Act').

FACTS OF CASE

3. The petitioner is engaged in the supply of service, was issued Notice dated 07.09.2021 under Section 74 of the Act, alleging evasion of tax. The petitioner filed reply to the Show Cause Notice pointing out that it was only a case of belated filing of returns for a period of five months and subsequently filed the

returns along with applicable tax, interest and penalty. Hence, there is no question of evasion of tax or imposition of penalty. Thereafter, the order in original dated 27.01.2023 was passed under the provision of Section 74 of the Act and the copy of the physical order has been served on 25.03.2023. The petitioner thereafter filed the appeal on 28.12.2023. In the meantime, the Government of India, Ministry of Finance issued a Notification No. 53/2023-Central Tax dated 02.11.2023, regulating the procedure for filing and disposal of the appeals which were hit by limitation.

3.1 Thereafter, by the impugned order dated 11.06.2024, the respondent-authority rejected the appeal filed by the petitioner solely on the ground of delay and it was observed that the appellate authority has no power to condone the delay as prescribed under Section 107 of the Act read with Rule 108 of the GST Rules, beyond the period of 120 days. As a result, the petitioner by way of present writ petition, has challenged the order in appeal.

<u>SUBMISSION ON BEHALF OF PETITIONER</u>

4. Learned advocate Mr. Uchit N. Sheth appearing for the petitioner has submitted that the Government has extended the time to file appeal under the provision of Section 107 of the Act till 31.01.2024 provided that the tax payer meets the conditions as mentioned in the Notification dated 02.11.2023. It is submitted that the petitioner fulfills both conditions (a) and (b) mentioned at paragraph No.3, thus it is urged that the impugned order ought not to have been rejected on the ground of delay. He has also referred to the agenda of the 52nd GST Council Meeting

dated 07.10.2023 and has submitted that the intention of the council was to entertain the appeals even if they are filed beyond the period of limitation and the notification would apply to those appeals which were already rejected on the ground of limitation and also to those appeals which were required to be filed before the cut off date of 31.01.2024. Since in the present case, the petitioner has filed the appeal on 28.12.2023, the same is required to be decided on merits.

4.1 In support of his submissions, learned advocate Mr. Sheth has relied upon the decision of this Court in the case of Safal Developers & Anr V. State of Gujarat & Anr. (2017) 99 VST 461.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

5. Learned Senior Standing Counsel Mr. Jani appearing for the respondent has submitted that the Notification dated 02.11.2023, would not apply in the case of the petitioner as the petitioner has filed the appeal on 28.12.2023 and the underlying intention of the Notification was to permit the filing of fresh appeals in case the appeals had been rejected. It is contended that since the appeal filed by the petitioner was not in existence at the time of issuance of the Notification, there was no question of deciding the same on the ground of delay and since, the Notification applies to only those appeals which are filed and rejected on the ground of delay, prior to the issuance of such Notification. Hence, it is urged that the writ petition may not be entertained.

ANALYSIS & OPINION

6. We have heard the learned advocates appearing for the respective parties. The issue which calls for deliberation before

this Court pertains to applicability of the Notification dated 02.11.2023 to the appeal filed by the petitioner on 28.12.2023. It is not in dispute that against the Order-in-Original dated 27.01.2023 passed under Section 74 of the Act, the petitioner filed an appeal on 28.12.2023 under the provision of 107 of the Act appellate authority has rejected the appeal on the ground of delay as it was beyond limitation period of 120 days. It appears that in the intervening period, from 27.01.2023 till 28.12.2023, the Government of India, Ministry of Finance issued Notification dated 53/2023 dated 02.11.2023. The genesis of the Notification lies in the agenda of the GST Council Meeting.

7. We have perused the minutes of the 52nd GST Council Meeting held on 07.10.2023. The GST Council was apprised of with the decisions of the appellate authorities in rejecting the appeals on the ground of delay, in those cases where the demand or demand orders for initiation of recovery proceedings under Section 79 of the Act, were received after a lapse of time prescribed for filing of the appeals. It was noticed that the many of the appeals were filed beyond the limitation period are either pending before the appellate authorities or were rejected for non adherence to the time period specified under Section 107(1) of the Act. The Council was conscious of the facts that the appeals were likely to be rejected, in view of limited power of the appellate authority to condone any delays and if such appeals are allowed by condoning the delay, then a large number of such taxpayers are likely to come forward and would pay the pre-deposit amount. Accordingly, the recommendations of law committee were approved by the GST Council, which led to the issuance of the Notification dated 02.11.2023.

8. The Revenue has raised the dispute of the applicability of the said notification in the case of present petitioner who has filed the appeal on 28.12.2023. It is argued before us, that since the appeal of the petitioner never got rejected on the ground of delay the provisions of such Notification would not get attracted. We are unable to accept the aforesaid submissions, since the petitioner cannot be put at a lower pedestal to those taxpayers whose appeals were filed and got rejected on the ground of delay and still, they were allowed to file an appeal in view of the Notification dated 02.11.2023.

8.1 We may extract the relevant provisions of the Notification the same are as under:-

> "*S.O....(E). In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31" day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow the following special procedure for filing appeals in such cases:*
>
> *2 The said person shall file an appeal against the said order in **FORM GST APL-01** in accordance with sub-section (1) of Section 107 of the said Act, on or before 31 day of January 2024:-*
>
> ***Provided** that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the*

issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) 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

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger."

9. A careful reading of the aforesaid Notification imply that a taxpayer who could not file an appeal against the order passed by the proper officer on or before 31.03.2023 under Section 73 or 74 of the Act, within a specified period mentioned under Section 107(4) of the Act and the taxpayer and those taxable persons whose appeal against the said order have been rejected on the ground of that the appeal was not filed within the period specified under Section 107(1) read with Section 107(4) of the Act.

9.1 The proviso to paragraph No. 2 of the said Notification manifests that an appeal which is pending before the appellate authority prior to issuance of the Notification dated 02.11.2023, fulfills the conditions mentioned in paragraph No. 3. The case of present petitioner, is to be examined in light of the outer cut-off date i.e. 31.01.2024, which enables the taxpayer to file an appeal, if the appeal has been rejected on the ground of delay. The conditions prescribed under paragraph No. 3 of the Notification dated 02.11.2023, would operate in following contingencies :-

(1) for those tax payers, who could not file an appeal within limitation, period,

(2) and the appeals which are filed and rejected on the ground of delay.

(3) where the appeals which are pending before the appellate authorities, before the issuance of the Notification dated 02.11.2023.

(4) and those appeals which were to be filed within the extended period i.e. before the cut-off date 31.01.2024 in case the conditions mentioned in clause (a) and (b) are fulfilled.

10. In the present case, it is not in dispute that the conditions mentioned in paragraph no.3 about the payment of tax is fulfilled by the petitioner. Thus, upon overall analysis and examination of the GST Council read with the provisions of the said Notification, it manifests that the Notification has been issued in favour of the taxpayers and also in the favour of the Revenue which can collect the tax, interest as well as penalty as mentioned in paragraph no.3 of the Notification. The taxpayer like the petitioner who have filed the appeal before the cutoff date i.e. 31.01.2024, cannot be barred from the laudable object of the GST Council, which has resulted the issuance of the Notification. When the impugned appellate order dated 11.06.2024 was passed, the appellate authority was supposed to consider the Notification dated 02.11.2023, however we find that the appellate authority is blissfully silent on the notification dated 02.11.2023 and no cognizance of the notification has been taken by the appellate authority. The appellate authority cannot wait for the taxpayer to point out the provisions of the

notification issued by the Government of India and it is to be presumed that any Notification issued by the Government of India will be known to the appellate authority, more particularly, when it regulates the provision under Section 107 of the Act read with Sections 73 and 74 of the Act.

11. Thus, the writ petition deserves acceptance, accordingly, the present writ petition ***succeeds.*** The impugned Notice and Order are hereby quashed and set aside. The matter is remanded to the appellate authority to decide the same on merits in accordance with law. The said appeal shall be decided within a period of 12 (twelve) weeks from the date of receipt of the copy of this order.

sd/-
(A. S. SUPEHIA, J)

sd/-
(VAIBHAVI D. NANAVATI,J)

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