



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 14547 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**and**

**HONOURABLE MR.JUSTICE D.N.RAY**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

VENUS MACRO PRINTS PVT. LTD.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR. APURVA N MEHTA(7202) for the Petitioner(s) No. 1

MR. RAJ TANNA, AGP for the Respondent(s) No. 1,2,3

NOTICE SERVED for the Respondent(s) No. 1,2,3

**CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

**and**

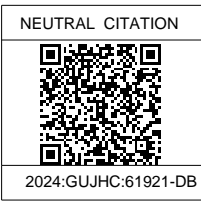
**HONOURABLE MR.JUSTICE D.N.RAY**

**Date : 30/10/2024**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE D.N.RAY)**

1. The petitioner had filed an appeal being ARN:AD2405210020307 dated 08-05-2021 against Order



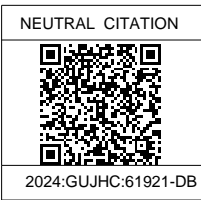
No.ZD240221013594X dated 27-02-2021 before the Joint Commissioner of State Tax, Appeal-1, Rajkot. However, since the petitioner had not submitted certified copy of the order i.e. GST Form RFD-06, the said appeal came to be dismissed in terms of Rule 108(3) of the GGST Rules, 2017 which, at the relevant point of time read as under:-

*“As per Rule 108(3) of the GGST Rules, 2017 "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 authorized 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.*

2. Being aggrieved by the aforesaid order dated 28.2.2023, the petitioner has filed the present petition on the ground that the said rule already stood amended on 26.12.2022 and now provides that self certified copies are required to be submitted only in such cases where the decision or order, appeal against is not uploaded on the common portal, which is not situation in the present case. Accordingly, the petitioner has prayed as under:-



*“(A) YOUR LORDSHIPS may be pleased to admit and allow the present Petition.*

*(B) YOUR LORDSHIPS may be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction quashing and setting aside the impugned Order dated 28.02.2023 passed by the Ld. Respondent No. 3 [Annexure C) and thereby restore the first appeal to the file of the Ld. Respondent No. 3 for hearing and disposal on merits and in accordance with the law.*

*(C) Pass any such other and/or further orders that may be deemed just and proper, in the facts and circumstances of the present case.*

3. It is not in dispute that Rule 108 as it stands with effect from 26.12.2022 is as under:-

*“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, long 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) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:*

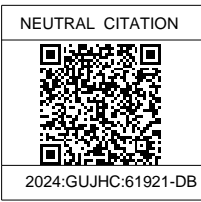


*Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL01 and a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal:*

*Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal. “*

4. It may also be noted that when the order which is appealed against is issued or uploaded on the common portal and the same can be viewed by the Appellate Authority, there could be no requirement whatsoever of submitting a certified copy of such uploaded order to test its authenticity. In today's day and age, insistence on “certified copy” of orders which can be obtained directly from the website of judicial and quasi judicial bodies is regressive in nature and puts a premium on needless archaism. For these reasons, the instant petition deserves to be allowed.

5. It has been held by this Court in the case of **Otsuka Pharmaceutical India Pvt. Ltd. Vs. Union of India and other** [R/ Special Civil Application No. 13209 of 2023 and allied petitions decided on 27<sup>th</sup> March, 2024] since the amendment which has come



into effect from 26.12.2022 is clarificatory in nature, it would be applicable retrospectively and the impugned order passed by the Appellate Authority rejecting the appeal would not survive, in any case.

6. For the foregoing reasons, the impugned order dated 28th February 2023 passed by the respondent No.3 is hereby quashed and set aside and the matter is remanded back to the appellant authority to pass a fresh de novo order on merits after giving an opportunity of hearing to the petitioner. Needless to clarify that this Court has not gone into the merits of the case and the same shall be decided by the appellant authority strictly in accordance with law and such exercise shall be completed within 12 weeks from the date of receipt of a copy of this order. This petition is accordingly disposed of.

**(BHARGAV D. KARIA, J)**

**(D.N.RAY,J)**

BINA SHAH