

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

(Through virtual mode from Jammu)

WP(C) No. 809/2024

Reserved on : 13.08.2025

Pronounced on: 24.12.2025

Uploaded on : 26.12.2025

Whether the operative part or judgment is pronounced

TC Tours Limited

.... Petitioner/Appellant(s)

Through:- Mr. Amrinder Singh, Advocate
Mr. Sheikh Umar Farooq, Advocate

V/s

Union Territory of J&K and ors.

.....Respondent(s)

Through:- Mr. Mohsin Qadiri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Per : Sindhu Sharma-J

01. The present petition has been filed by the petitioner against the impugned order dated 06.03.2023 passed by respondent No. 3, vide which, respondent No. 3 has rejected the appeal filed by the petitioner in **Form GST APL-02** for the reason that the dealer has not submitted hardcopy as mandatory under Section 107 of the Jammu and Kashmir GST Act, 2017 (hereinafter to be referred to as 'GST Act').

02. The petitioner, it is submitted, is engaged in providing tour related services by planning and organization of tours, arranging, transportation, accommodation facilities, meals and guide services and also assist in marketing the tourist destinations and tourism products. For providing these services, the petitioner has procured various inputs and

input services, in respect of which it avails the eligible Input Tax Credit (ITC) as per the provisions of J&K GST Act.

03. The respondent No. 4 issued a show cause notice dated 14.12.2020 under section 73 of the GST Act proposing the demand of CGST and SGST amounting to ₹8,57,286/- and ₹8,56,546/- along with the applicable interest and penalty. This demand was proposed on the ground that the petitioner had availed ITC in Form GSTR-3B as compared to ITC available under Form GSTR-2A for the period, April 2019 to March 2020. The show cause notice directed the petitioner to submit the reply to the show cause notice along with supporting document by 14.01.2021, however, the petitioner could not reply to the show cause notice for the reason that his business was severely affected by Covid-19 and also that he was not aware of the Show Cause Notice.

04. The demand of ₹17,14,572/- as proposed in the show cause notice along with the applicable interest and penalty was confirmed by the respondents vide order dated 02.06.2021. The petitioner filed an appeal against the order dated 02.06.2021 on the GST portal on 27.08.2021 after a pre-deposit of ₹ 1,71,458/-. The appeal was filed on the ground that the petitioner had not availed the excess ITC during the relevant period, and there was a mismatch between the ITC in Form GSTR-2A and Form GSTR-3B because of reporting ineligible ITC and ITC reversal and availment of ITC in subsequent financial year. The invoices, returns and reconciliation in support of these assertions were also submitted by the petitioner.

05. The appeal along with order dated 02.06.2021 as Annexure-II was uploaded by the petitioner on the GST portal. The petitioner had also received the provisional acknowledgement number after submission of the appeal. However, the appeal filed by the petitioner was rejected by respondent No. 3 by issuing Form GST APL-02 on 06.03.2023 on the ground that the petitioner had not submitted the hard copy of the appeal.

06. The contention of the petitioner is that the appeal against the order dated 02.06.2021 has been filed in Form GST APL-01 on 27.08.2021 in accordance with Section 107 of J&K GST Act read with Rule-108 of J&K GST Rules and there is no requirement of filing a hard copy of the appeal. The rejection of the appeal only on the ground of non-filing of the hard copy is unwarranted especially when there is no such requirement under rules. It is submitted that the appeal has been rejected without providing any opportunity of hearing to the petitioner which is in violation of principles of natural justice. Learned counsel for the respondents submits that the petitioner has also not filed the certified copy of the order impugned dated 02.06.2021, thus, the appeal was rejected on that count too. Learned counsel for the petitioner submitted that in the present case, the order dated 02.06.2021 was also uploaded on the portal and as per amended Rule-108, there is no requirement of filing a certified copy of the appeal. Hence the appeal was wrongly rejected by relying on Rule-108 prior to its amendment.

07. *Per Contra* learned counsel for the respondents opposed the submissions and submits that Rule-108 of the CGST Rules clearly provides submission of hard copy of the appeal along with the certified copy of

appeal but the petitioner has annexed neither the hard copy nor the certified copy of the impugned order along with the appeal. Thus, the Appellate Authority had rightly considered the provisions of CGST Act and J&K GST Rules, therefore, no interference in the impugned order is required.

08. In view of the submission, it is relevant to examine the relevant Rule. Section 107(5) of the GST Act provides as under:

Section 107-Appeals to the Appellate Authority –

(1) Any person, 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.

.....

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

09. Rule-108 of J&K GST, being relevant, is reproduced 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, 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 issue of provisional acknowledgement and where the said copy is submitted after: seven days, the date of filing of the appeal shall be the date of 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.

10. Section 107 of the J&K GST Act provides for filing of an appeal before the appellate authority against the order passed by the adjudicating authority. Sub-Section-(5) of Section 107 provides that every appeal in this section shall be filed in such form and verified in the prescribed manner. Rule-108(1) of the J&K GST Rules clearly provides that the appeal shall be filed along with all the relevant documents either in Form GST APL-01 electronically or otherwise as may be notified by the Commissioner.

11. Thus, it is clearly envisaged by the rule that the appeal could be submitted electronically to the Appellate Authority. The only other method for filing the same would be as notified by the Commissioner, the respondents have failed to place on record any notification to this effect, which in any case would be in addition to the prescribed mode of filing the appeal electronically. Therefore, rejection of the appeal merely on the ground that hard copy of the appeal has not been filed is unsustainable. The respondents rather than rejecting the appeal on this technical ground could have granted time to the petitioner to file the same within some stipulated time, if required.

12. The next contention of the respondents is that the petitioner has failed to upload the certified copy of the order impugned. This requirement of submitting the certified copy of the order, in case the order appealed is uploaded in the GST portal, has been removed vide amendment in Rule-108 issued vide S.O 104. In the present case, the order dated 02.06.2021 was uploaded on the GST Portal against which the petitioner had filed appeal, therefore, there was no requirement of submitting certified copy of the same. Reliance in this regard is placed on judgment passed in **Otsuka**

Pharmaceuticals India Private Limited versus Union of India and others, reported as **2024 Taxo.online 629**.

13. The undisputed facts are that the appeal was filed online within statutory period along with the copy of order and therefore, there was no requirement of filing the hard copy of the same. Therefore, its rejection on the ground of not filing of the hard copy, is without any merit. This apart, the appeal cannot be rejected only on these procedural grounds without granting any opportunity of hearing to the petitioner.

14. In the present case, the filing of the hard copy was not mandatory, therefore, rejection of the appeal merely on this ground affecting the substantial rights of the parties, is unsustainable and requires to be set aside. It is well settled that substantial justice cannot be sacrificed on the ground of mere technicalities. The mode of electronic filing stands provided in the rules and, therefore, there was no infraction of the same. This apart, rules of procedure are of hand maiden of justice and, therefore, the appeal could not be dismissed on the ground of technicalities.

15. In **Saraogi E-Ventures Private Limited & ors. vs. The Assistant Commissioner CGST & ors.** reported as **2023 (78) GSTL 226 (Cal)**, the Hon'ble Calcutta High Court has set aside the order rejecting the appeal for no submitting certified copy of the order as the petitioner has filed appeal within limitation period on GST portal along with the copy of the order. The Hon'ble Court also observed that the appeal should not be rejected on the hyper-technical grounds. The relevant portion of the judgment reads as under:-

3. By this writ petition, petitioners have challenged the impugned order dated 22nd March, 2023 passed by the Appellate Authority under the relevant provisions of CGST Act on the technical ground of non-filing of the certified copy of the order within seven days of online submission of appeal. It is undisputed fact that the appeal was filed online within the statutory period along with the copy of the order. So in my view if an appeal has got merit it should not be dismissed on such hyper-technical ground of non-filing of certified copy within the statutory period when the appeal itself was filed within the time along with copy of the order online.

4. Considering the facts and circumstances of the case, submission of the parties and in the interest of justice the aforesaid impugned order dated 22nd March, 2023 is set aside and the appeal is remanded back to the Appellate Authority concerned to consider and dispose of the appeal on merits and in accordance with law subject to fulfillment of all other formalities, within a period of three months from the date of communication of this order after observing the principles of natural justice.”

16. In view of the aforesaid facts and circumstances, this petition is allowed and the impugned order dated 06.03.2023 is set aside. The matter is remanded back to the respondent No. 3 to decide the appeal afresh on merits in accordance with law after affording an opportunity of hearing to the parties.

(SHAHZAD AZEEM)
Judge

(SINDHU SHARMA)
Judge

JAMMU
24.12.2025
Ram Murti