

**TAX INFO**

*Dated 09/12/2021*

**Latest update on GST Law: Information regarding Delay In Filing Of The Certified Copy Of Order During Appeal Must Be Condoned During COVID Times as given in Judgement by Orissa High Court.**

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

<b>Name of Petitioner</b>	M/s. Shree Udyog
<b>Name of Respondent</b>	Commissioner of State Tax Odisha
<b>Court</b>	Orissa High Court
<b>Date of Judgement</b>	10/06/2021
<b>Appeal No.</b>	Writ Petition No.14887 of 2021

**Facts of the Case:**

The Adjudicating Authority passed the impugned order on 14th August, 2020. The last date for the filing of the appeal against the said order was 17th November, 2020. The Petitioner did file the appeal on 13th November, 2020 electronically, accompanied by a downloaded copy of the order appealed against.

**Under Rule 108 (3) of the OGST Rules, 2017, the appeal had to be accompanied by a certified copy of the order appealed against. This had to be submitted within seven days of the filing of the appeal. Under the proviso to Rule 108(3) if the certified copy is submitted within seven days of the filing of the appeal, then the date of filing of the appeal would be the date of the issue of the provisional acknowledgment. If it is filed after seven days, the date of filing of the appeal would be the date of submission of such certified copy.**

In the present case, the Petitioner could furnish a certified copy of the order of appealed against only on 9th March, 2021, i.e., more than three months and 25 days after the filing of the appeal. According to the Appellate Authority, this delay could not be condoned and, therefore, the appeal itself was dismissed as not having been preferred in time.

**Contention of the Petitioner:**

The Petitioner had in fact filed the appeal within a period of three months. It is only on the account of the appeal not being accompanied by the certified copy of the order appealed against, within a period of seven days that it has been rejected on the ground of delay. Though the appeal was accompanied by the downloaded printed copy of the order appealed against at the time of filing of the appeal, it was not accompanied by the certified copy thereof at that stage since the Lawyer who had filed the appeal was in self-quarantine as he had come into contact with a client who had tested positive for Covid-19.

The difficulties generally faced by lawyers and litigants in applying for and obtaining certified copies of orders are generally known. Acknowledging this reality, the explanation offered for the delay in furnishing such certified copy ought to have been accepted by the Appellate Authority and the delay in that regard ought to have been condoned.

**Decision of the Court:**

The Court is of the view that the mere delay in enclosing a certified copy of order appealed against along with the appeal should not come in the way of the Petitioner's appeal for being considered on merits by the Appellate Authority. This is a case of substantial compliance and the interests of justice ought not to be constrained by a hyper technical view of the requirement that a certified copy of the order appealed against should be submitted within one week of the filing of the appeal. To repeat, in these Covid times when there is a restricted functioning of Courts and Tribunals in general, a more liberal approach is warranted in matters of condonation of delay, which cannot be said to be extraordinary.

Accordingly, the impugned order dated 10th March, 2021 of the Appellate Authority rejecting the appeal on the ground of delay was set aside.

The Appellate Authority may adopt a liberal approach considering that these are times of restricted functioning of Courts and tribunals due to the Covid pandemic. As long as the appeal is accompanied by an ordinary downloaded copy of the order appealed against, verified as a true copy by the Advocate for the Appellant, the delay in filing such certified copy, subject to it not being extraordinary, be condoned.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address:** House No. 54, Pocket A-3, Sector-5, Rohini- 110085

**Phone:** 91-9810032846; 011 - 45131427

**Email:** sureshagg@gmail.com

**Website:** <http://www.sureshtaxation.com>