



NC: 2024:KHC:24692  
WP No. 14111 of 2024  
C/W WP No. 14882 of 2024  
WP No. 15316 of 2024  
WP No. 15472 of 2024  
WP No. 15491 of 2024

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF JULY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE S SUNIL DUTT YADAV**

**WRIT PETITION NO. 14111 OF 2024 (T-RES)**

**C/W**

**WRIT PETITION NO. 14882 OF 2024 (T-RES)**

**WRIT PETITION NO. 15316 OF 2024 (T-RES)**

**WRIT PETITION NO. 15472 OF 2024 (T-RES)**

**WRIT PETITION NO. 15491 OF 2024 (T-RES)**

**IN W.P. NO.14111 OF 2024**

**BETWEEN:**

1. M/S HITACHI ENERGY INDIA LTD  
PLOT NO.4A, 5 AND 6, 2<sup>ND</sup> STAGE  
PEENAYA INDUSTRIAL AREA, PEENYA  
BENGALURU - 560 058  
(REPRESENTED BY ARINDAM LAHIRI  
HEAD OF TAXATION)  
INCORPORATION UNDER RULE 29 OF THE  
COMPANIES ACT

... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR  
BANGALORE - 560 009





**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

3. JOINT COMMISSIONER OF COMMERCIAL TAXES  
(APPEALS-6), TTMC COMPLEX,  
BMTc BUILDING  
SHANTINAGAR,  
BANGALORE - 560 027

4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
KIADB BUILDING,  
PEENYA INDUSTRIAL AREA  
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DTD 26.12.23 PASSED BY THE R3 IN THE MATTER OF GST APPEAL NO. 109/22-23 (ANNEXURE-A) FOR THE PERIOD JANUARY 2020 AND ETC.

**IN W.P. NO.14882 OF 2024**

**BETWEEN:**

1. M/S HITACHI ENERGY INDIA LTD  
PLOT NO.4A, 5 AND 6, 2<sup>ND</sup> STAGE  
PEENAYA INDUSTRIAL AREA, PEENYA  
BENGALURU - 560 058  
(REPRESENTED BY ARINDAM LAHIRI  
HEAD OF TAXATION)  
INCORPORATION UNDER RULE 29 OF THE  
COMPANIES ACT

... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

VIDHANA SOUDHA  
BANGALORE - 560 001

2. THE COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR  
BANGALORE - 560 009
3. JOINT COMMISSIONER OF COMMERCIAL TAXES  
(APPEALS-6), TTMC COMPLEX,  
BMTc BUILDING  
SHANTINAGAR,  
BANGALORE - 560 027
4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
KIADB BUILDING,  
PEENYA INDUSTRIAL AREA  
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DTD 26.12.23 PASSED BY THE R3 IN THE MATTER OF GST APPEAL NO. 107/22-23 (ANNEXURE-A) FOR THE PERIOD FEBRUARY 2020 AND ETC.

**IN W.P. NO.15316 OF 2024**

**BETWEEN:**

1. M/S HITACHI ENERGY INDIA LTD  
PLOT NO.4A, 5 AND 6, 2<sup>ND</sup> STAGE  
PEENAYA INDUSTRIAL AREA, PEENYA  
BENGALURU - 560 058  
(REPRESENTED BY ARINDAM LAHIRI  
HEAD OF TAXATION)



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

INCORPORATION UNDER RULE 29 OF THE  
COMPANIES ACT

... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT,  
VIDHANA SOUDHA  
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR, BANGALORE - 560 009
3. JOINT COMMISSIONER OF COMMERCIAL TAXES  
(APPEALS-6), TTMC COMPLEX,  
BMTc BUILDING, SHANTINAGAR,  
BANGALORE - 560 027
4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
KIADB BUILDING, PEENYA INDUSTRIAL AREA  
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE  
IMPUGNED ORDER DTD 26.12.23 PASSED BY THE R3 IN THE  
MATTER OF GST APPEAL NO. 105/22-23 (ANNEXURE-A) FOR  
THE PERIOD MARCH 2020 AND ETC.

**IN W.P. NO.15472 OF 2024**

**BETWEEN:**

1. M/S HITACHI ENERGY INDIA LTD  
PLOT NO.4A, 5 AND 6, 2<sup>ND</sup> STAGE



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

PEENAYA INDUSTRIAL AREA, PEENYA  
BENGALURU - 560 058  
(REPRESENTED BY ARINDAM LAHIRI  
HEAD OF TAXATION)  
INCORPORATION UNDER RULE 29 OF THE  
COMPANIES ACT

... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR  
BANGALORE - 560 009
3. JOINT COMMISSIONER OF COMMERCIAL TAXES  
(APPEALS-6), TTMC COMPLEX,  
BMTC BUILDING  
SHANTINAGAR,  
BANGALORE - 560 027
4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
KIADB BUILDING,  
PEENYA INDUSTRIAL AREA  
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF  
THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE  
IMPUGNED ORDER DTD 26.12.23 PASSED BY THE R3 IN THE  
MATTER OF GST APPEAL NO. 104/22-23 (ANNEXURE-A) FOR  
THE PERIOD MARCH 2020 AND ETC.



NC: 2024:KHC:24692  
WP No. 14111 of 2024  
C/W WP No. 14882 of 2024  
WP No. 15316 of 2024  
WP No. 15472 of 2024  
WP No. 15491 of 2024

**IN W.P. NO.15491 OF 2024**

**BETWEEN:**

1. M/S HITACHI ENERGY INDIA LTD  
PLOT NO.4A, 5 AND 6, 2<sup>ND</sup> STAGE  
PEENAYA INDUSTRIAL AREA, PEENYA  
BENGALURU - 560 058  
(REPRESENTED BY ARINDAM LAHIRI  
HEAD OF TAXATION)  
INCORPORATION UNDER RULE 29 OF THE  
COMPANIES ACT

... PETITIONER

(BY SRI. RAVI RAGHAVAN., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
THROUGH ITS PRINCIPAL SECRETARY  
FINANCE DEPARTMENT  
VIDHANA SOUDHA  
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL TAXES  
VANIJYA THERIGE KARYALAYA  
GANDHINAGAR  
BANGALORE - 560 009
3. JOINT COMMISSIONER OF COMMERCIAL TAXES  
(APPEALS-6), TTMC COMPLEX,  
BMTc BUILDING  
SHANTINAGAR,  
BANGALORE - 560 027
4. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES  
KIADB BUILDING,  
PEENYA INDUSTRIAL AREA  
BANGALORE - 560 058

... RESPONDENTS

(BY SRI. K. HEMA KUMAR, AGA)



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE IMPUGNED ORDER DTD 26.12.23 PASSED BY THE R3 IN THE MATTER OF GST APPEAL NO. 108/22-23 (ANNEXURE-A) FOR THE PERIOD JANUARY 2020 AND ETC.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Petitioner in all these petitions has called in question the validity of the impugned orders whereby the appeals filed under Section 107(11) of the KGST/CGST Act, 2017 ('the Act' for brevity) were dismissed on the ground that the appeals were filed beyond time and the delay was such that it would be beyond the time that was condonable under Section 107(4) of the Act.

2. Learned counsel for the petitioner submits that all these writ petitions should be disposed off taking note of the law laid down in W.P.No. 14881/2024 as the question of starting point of limitation has been held to be date of acknowledgement issued through online filing and



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

the date taken by the authority of physical filing ought to be discarded.

3. The observations made in W.P.No. 14881/2024 read as follows:

*"The petitioner has sought for issuance of writ of certiorari to set aside the impugned order at Annexure-'A' dated 26.12.2023, whereby the appeal filed under Section 107(11) of the KGST/CGST Act, 2017 ('the Act' for brevity) was dismissed on the ground that the appeal was filed beyond time and the delay was such that it would be beyond the time that was condonable under Section 107(4) of the Act.*

2. *The facts on record would indicate that the refund order of the petitioner came to be rejected on 03.03.2022 which order was served on the petitioner on 03.03.2022. The appeal was filed through online mode, i.e. GST common portal on 03.06.2022 as is evident from the Form GST-APL-01.*

3. *The appeal is required to be filed under Section 107 read with Rule 108 of the CGST Rules, 2017 within a period of three months from the*





**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

*date on which the decision or order was communicated. Section 107(1) of the CGST Act reads as follows:-*

***"107-Appeals to Appellate Authority -***

***(1) 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."***

4. *The only ground which apparently has been taken note of, for rejecting the appeal was the date of physical re-filing of the appeal on 25.01.2023. It is not in dispute that the appeal was filed in online mode on 03.06.2022 though physical filing of the order impugned was made on 25.01.2023. Under Rule 108(3) of CGST Rules, 2017, prior to its substitution provided that the date of filing of appeal would be the date when the certified copy of the decision or order is submitted where such order was submitted after seven days from the date of filing Form GST APL-01.*

5. *Rule 108(3) of CGST Rules prior to its substitution by way of amendment on 26.12.2022 vide Notification No.26/2022-CT read as follows:-*



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

**"Appeal to the Appellate Authority**

**108.** (1) xxx

(2) xxx

(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 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".*

*(emphasis supplied)*

*It must be noticed that Rule 108(3) is substituted with modification vide Notification No.26/2022-CT dated 26.12.2022 and the substituted Rule reads as follows:-*

*"In the said rules, in rule 108, for sub-rule (3), the following sub-rule shall be substituted, namely:-*



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

*"(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 authorized 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 APL-01 and a final acknowledgement, indicating the appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorized 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."*

*(emphasis supplied)*

6. *The change effected by virtue of Rule 108(3) is that the date of appeal would be the date of issuance of acknowledgment (which was on 03.06.2022 at Annexure-'G') and such change is in contradistinction to the earlier requirement which provided that the date of appeal would be*



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

*the date of furnishing of certified copy of the order, if submitted after seven days. If that were to be so, the date of physical filing of the certified copy ought not to have been taken note of.*

7. *Though appeal was filed prior to substitution of Rule 108(3), in the present case, the matter having been decided after the amendment by way of substitution, the amended Rule wherein Rule 108(3) ought to be taken note of. Further, it must be noticed that the substitution of sub-rule(3) ought to date back from the date when the Rule was introduced.*

8. *The substituted provision is in the nature of clarification.*

*In the Minutes of 48<sup>th</sup> GST Council held on 17.12.2022, it was held as follows:-*

*"8.6.19 Law Committee accordingly recommended that to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgement by the appellate authority, an amendment might be made in sub-rule (3) of Rule 108 and in Rule 109 of the CGST rules, 2017 and Form GST APL-02. The details of the same are provided in the agenda note.*

*The Council agreed with the recommendation of the Law Committee."*



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

9. *In light of the same, it is clear that substitution was to provide clarity on the requirement of submission of certified copy of the order. If that were to be so, the substitution in order to clarify would have retrospective effect and accordingly, the substituted Rule ought to apply in the case of petitioner as well.*

10. *Accordingly, the order at Annexure-'A' dated 26.12.2023 is set aside and in light of the discussion made hereinabove, the date of filing that was to be taken note of is 03.06.2022 which is the date of acknowledgement of filing of the appeal and not 25.01.2023 which was the date of physical filing of the impugned order which was wrongly taken by the Appellate Authority. Accordingly, as the delay requires to be condoned and there being no ambiguity in the position of law, the delay is condoned and the matter is remitted for consideration afresh. All contentions are kept open. The parties to appear before the Appellate Authority on 08.07.2024.*

*Accordingly, the petition is **disposed off.**"*



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

4. In light of the above, the starting point of limitation would be the date of communication of the refund rejection order. In the present cases, the dates of refund rejection order, the dates of filing of the appeals through online and the dates of filing of the appeal physically, are as follows:

<b>WP Nos.</b>	14111/24	15316/24	14882/24	15491/24	15472/24
<b>Dates of rejection order</b>	03.03.22	03.03.22	02.03.22	02.03.22	02.03.22
<b>Dates of filing of Appeal electronically</b>	03.06.22	03.06.22	03.06.22	03.06.22	03.06.22
<b>Dates of filing of appeal physically</b>	25.01.23	25.01.23	25.01.23	25.01.23	25.01.23

5. In light of the legal position that would emanate from the order passed in W.P.No.14881/2024 extracted above, the date of filing of the appeal physically as extracted above, cannot be taken to be the date of actual filing of the appeal. The appeal ought to have been filed within 3 months from the date of receipt of the order and



**NC: 2024:KHC:24692**  
**WP No. 14111 of 2024**  
**C/W WP No. 14882 of 2024**  
**WP No. 15316 of 2024**  
**WP No. 15472 of 2024**  
**WP No. 15491 of 2024**

taking note of the date on which the appeal was filed online which is to be taken to be the date of filing of the appeal, the appeal could be construed to have been filed in time.

6. If that were to be so, the present appeals having been filed in time, the orders of the Appellate Authority at Annexure-A in all the writ petitions are set aside and the matter is remitted to the appellate authority for fresh adjudication on the merits of the matter.

7. Accordingly, the petitions are disposed off. Petitioner is directed to appear before the Appellate Authority on 08.07.2024.

**Sd/-**  
**JUDGE**

VP