

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 14th OF JULY, 2023

WRIT PETITION No. 15385 of 2023

BETWEEN:-

**M/S GYAN CEMENT HOUSE THROUGH
PROPRIETOR SEEMA SINGH W/O JAGAT
PRATAP SINGH, AGED ABOUT 40 YEARS,
OCCUPATION BUSINESS, R/O 102, SOUTH
KARAUNDIYA REWA, SIDHI ROAD
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI NITIN AGRAWAL - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH PRINCIPAL SECRETARY,
MINISTRY OF FINANCE STATISTICS AND
COMMERCIAL TAX, VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. DEPUTY COMMISSIONER OF STATE TAX
OFFICE OF JOINT COMMISSIONER OF
STATE TAX, SATNA DIVISION, VINDHYA
CHAMBER OF COMMERCE, NEAR
CIRCUIT HOUSE, REWA ROAD, DISTRICT
SATNA (MADHYA PRADESH)**
- 3. COMMISSIONER OF STATE TAX MADHYA
PRADESH, MOTI BUNGLOW COMPOUND,
M.G. ROAD, NEAR GANDHI HALL, INDORE
(MADHYA PRADESH)**

4. OFFICE OF THE ASSISTANT
COMMISSIONER OF COMMERCIAL
TAXES, CIRCLE BAIDHAN, D.A.V. SCHOOL
ROAD, BEHIND RAMNIWAS TALL,
DISTRICT (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI RITWIK PARASHAR – GOVERNMENT ADVOCATE)

*This petition coming on for admission this day, Hon’ble Shri
Justice SHEEL NAGU passed the following:*

ORDER

The petitioner-assessee has approached this Court praying for quashment of impugned order dated 09.01.2023 (Annexure P/7) on various grounds including merits.

2. It is not disputed by learned counsel for petitioner that an alternative statutory remedy of appeal is available u/S.107 of C.G.S.T. Act, 2017 (for brevity “Act of 2017”). However, it is submitted that fact of passing of impugned order came to knowledge of petitioner recently on 27.06.2023 and since in the meanwhile the time period prescribed for filing of appeal expired, petitioner has no option but to approach this Court.

2.1 Relevant provisions of Section 107 (1) and 107(4) of Act of 2017 are reproduced below for ready reference and convenience:-

“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.

(2) *****

(3) *****

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.”

3. A bare perusal of statutory provision u/S.107 of Act, 2017 reveals that the Appellate Authority cannot entertain an appeal filed beyond the original period of three months + one month of extended period since there is no power given under the statute for condonation of delay. However, period of three months + one month, as the case may be, is required to be calculated from the day that decision or order appealed against is communicated to aggrieved person.

4. Learned counsel for petitioner submits that impugned order herein was communicated to petitioner on 27.06.2023.

5. Learned counsel for petitioner has placed reliance on a Single Bench decision of High Court of Madras rendered on 04.02.2022 in WP. No.27654/2021 & other connected matters whereby in the backdrop of teething problems under the new regime of G.S.T., which has come into operation since 01.07.2017, the Madras High Court after taking into account the provisions of Section 169(1)(b) of G.S.T. Act held thus:-

“13. The respondents can therefore continue the service of notice through registered post or speed post or courier with acknowledgment to the petitioners at their last known place of business or residence and upload the same in the web portal. Till all problems are resolved on the technical side, the authority may simultaneously serve the notice of assessment and communications under the Act and Rules both through registered post or speed post or courier with acknowledgment as is contemplated Section 169(1)(b) of the Act and through web portal.

14. Once all technical problems are resolved, the practice of sending physical copy through registered post or speed post or courier with acknowledgment may be dispensed with.”

5.1 Thus, aforesaid decision of Madras High Court would only apply during the prevalence of initial stages of new regime.

5.2 Instant case pertains to year 2023 and since nearly six years have expired since coming into effect of new regime on 01.07.2017 the teething issues are over and; therefore, provisions of Section 169(1) of Act of 2017 deserve to be implemented in letter and spirit without implying or reading into it anything which is not expressly provided. In this view of the matter, the decision rendered by Madras High Court is of no avail to the petitioner.

6. It is a disputed question of fact whether impugned order was communicated to petitioner on 27.06.2023, which has to be looked into by the Appellate Authority.

7. Therefore, this Court refrains from entering into merits of the matter and thus relegates the petitioner to file an appeal before the Competent Authority, which shall first go into the question about date of communication of impugned order to petitioner and thereafter decide as to whether the appeal is filed within limitation period or not and if it is found that appeal is filed within limitation period, then the same shall be decided on its own merits provided that there is no other legal bar. Resultantly, impugned order dated 09.01.2023 (Annexure P/7) is set aside.

8. With aforesaid liberty, present petition stands disposed of.

(SHEEL NAGU)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE