

IN THE HIGH COURT OF MADHYA PRADESH

AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIRENDER SINGH

WRIT PETITION No. 13023 of 2022

Between:-

**M/S YASH KRISHI SEVA KENDRA
THROUGH ITS PROPRIETOR - MR.
RAJESH MEENA, AGED ABOUT 37
YEARS, OCCUPATION BUSINESS,
HAVING ITS OFFICE AT FRONT MANDI
GATE, BHOPAL ROAD NASRULLAGANJ
SEHORE (M.P.) - 466331**

.....PETITIONER

(BY SHRI RAJVARDHAN DUTT PARARHA- ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
THROUGH ITS PRINCIPAL SECRETARY,
DEPARTMENT OF FINANCE,
GOVERNMENT OF M.P., VALLABH
BHAWAN, BHOPAL (M.P.)**
- 2. JOINT COMMISSIONER CUM
APPELLATE AUTHORITY FOR STATE
GOODS AND SERVICE TAX, ARERA
HILLS, BHOPAL (M.P.)**

**3. ASSISTANT COMMISSIONER OF STATE
TAX, OFFICE BHOPAL NAKA, OPPOSITE
TO MAHILA, DISTRICT SEHORE (M.P.)**

.....RESPONDENTS

***(RESPONDENTS BY SHRI PIYUSH JAIN – GOVERNMENT
ADVOCATE)***

Reserved on : 15.09.2022
Passed on : 23.11.2022

Per : Justice Sheel Nagu :

ORDER

This petition under Article 226 of the Constitution of India has been filed by a firm through its proprietor Mr. Rajesh Meena, who is registered under the Goods and Service Tax Act, 2017 (for short ‘GST Act’) vide registration GSTIN No.23COKPM5096J1ZH praying for the following reliefs:

- “(i) This Hon’ble Court may kindly be pleased to summon the entire relevant record from the possession of the respondents, for its kind perusal;
- (ii) To this Hon’ble Court may further pleased to quash and set aside the impugned order dated 04-03-2022

(Annexure P/3) passed by the respondent no.2, in the interest of justice.

- (iii) This Hon'ble Court further pleased to direct the respondent no.2 to hear the matter on the merit in the interest of justice.
- (iv) That, this Hon'ble Court may kindly be pleased to direct the respondents to revoke the cancelled GST Registration of the petitioner.
- (v) Any other relief, which the Hon'ble Court deems fit in the facts and circumstances of the case, be granted to the Petitioner.

2. Learned counsel for the rival parties are heard on the question of admission as well as final disposal.

3. The grievance in short as projected by learned counsel for petitioner is against the dismissal of appeal preferred u/S. 107 of the GST Act vide order dated 04.03.2022 (Annexure P/3) passed by Joint Commissioner-cum-Appellate Authority for State Goods and Service Tax whereby the said appeal has been dismissed as time-barred. It is contended by petitioner that neither the show cause notice issued on 16.05.2018 u/S. 29(2) of the M.P. GST Act nor the order of cancellation dated 04.03.2022 (Annexure P/3) was communicated to the

petitioner and, therefore, he was deprived of preferring an appeal u/S. 107 of the GST Act within the prescribed period of limitation.

4. Thus the crux of the grievance is non-communication of the order of cancellation of registration within the period of limitation prescribed for preferring an appeal whereby depriving the petitioner of availing the remedy of appeal.

4.1 To resolve the aforesaid factual controversy, this court requisitioned response from the Revenue by issuing notice.

4.2 The respondents vide return filed on 23.08.2022 *inter alia* revealed that the show cause notice dated 16.05.2018 as well as the order of cancellation of registration dated 06.06.2018 were both uploaded on the portal in terms of Section 169(1) (D) of GST Act. Thus, it is submitted by respondents that once the show cause notice as well as the order of cancellation of registration was available on portal, the same was available for petitioner to be downloaded for the purposes of filing an appeal against the same. In this regard Annexure R/3 has been filed along with the return which are the details of these orders visible on the portal. The Revenue further discloses by referring to Section 169 that any decision, summon or notice or communication made under the GST Act or Rules framed therein is mandated to be served *inter alia* by means of making it available on the official portal. As such it is submitted that the petitioner was well aware of the show cause notice as well as the order of cancellation of registration which was available on the portal and yet the petitioner did not take advantage of the same for which no one else except the petitioner can be blamed.

5. The petitioner in his rejoinder has placed reliance on a decision dated 25.02.2020 passed in a bunch of three petitions including W.P. No.21978/2019 by a Co-ordinate Bench where this Court finding the order of cancellation of registration to be not communicated to the petitioner therein afforded opportunity to the petitioner therein to prefer an appeal.

6. A bare perusal of the order dated 25.02.2020 reveals that the Revenue in the said case had communicated the order of cancellation of registration to the erstwhile counsel of the petitioner therein and thus the Co-ordinate Bench held that the period of limitation would be counted from the time the petitioner therein gained knowledge of the impugned order and not from the date of communication to erstwhile counsel.

6.1 The factual situation in the present case is distinct and at variance to the facts and circumstances prevailing in W.P. No.21978/2019 and the other two writ petitions which were decided vide Annexure P/5. In the present case, it is clear from the return that the respondents adhered to the provision of Section 169 of the GST Act as regards communication of the show cause notice as well as order of cancellation of registration and, therefore, no fault can be found with the Revenue.

6.2 Pertinently, the return of respondents further reveals that the show cause notice in question was sent on the mobile bearing number as mentioned on the portal belonging to petitioner and e-mail address of erstwhile consultant.

6.3 Therefore, it is clear as day light that the appeal preferred by petitioner u/S. 107 of GST Act was hopelessly time barred and since there is no further enabling provision in the hands of appellate authority to extend the period of limitation, this Court in its writ jurisdiction cannot tinker with the statutory provision u/S. 107 of GST Act, which does not bestow any discretionary power on the appellate authority to extend the period of limitation.

7. Consequent upon the above discussion, it necessarily follows that the impugned order of rejection of appeal as time barred cannot be interfered with.

8. Consequently, the writ petition stands **dismissed**.

(SHEEL NAGU)
JUDGE

(VIRENDER SINGH)
JUDGE

DV

Digitally signed by
DINESH VERMA
Date: 2022.11.24
15:50:59 +05'30'