

**Court No. - 5**

**Case :-** WRIT TAX No. - 945 of 2023

**Petitioner :-** M/S Virender Kumar Projects Pvt Ltd

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Petitioner :-** Nishant Mishra, Vedika Nath

**Counsel for Respondent :-** C.S.C.

**Hon'ble Piyush Agrawal, J.**

Heard Shri Nishant Mishra, learned counsel for the petitioner and learned ACSC for State - respondents.

The instant writ petition has been filed challenging the order dated 31.05.2023, by which the appeal of the petitioner has been dismissed on the ground of limitation by taking the date of order under challenge as the date of communication.

Learned counsel for the petitioner submits that the impugned order dated 03.12.2021 was neither communicated, nor served upon the petitioner. He further submits that the respondent no. 2 has failed to appreciate the word "communicated" used in section 107 of the GST Act in contrast to the word "served" used in section 169 of the GST Act. Therefore, the order dated 03.12.2021 may have been served by making it available on the portal as provided under section 169 of the GST Act, but the same will not amount to communication of the order as the order can be said to be communicated only when the person concerned comes to know about the same. He further submits that sub-section (1) of section 169 of the GST Act provides the mode of services, i.e., by registered post or speed post, communication on e-mail, making available on the common portal, by publication in newspaper or by affixation. However, as per sub-section (2) of section 169 of the GST Act, the order is deemed to be served only in case the service is effected by tendering or published or a copy thereof is affixed in the manner as provided in sub-section (1). He further submits that the Statute nowhere provides that the order made available on the common portal is deemed to be served and clauses (c) & (d) of sub-section (1) of section 169 of the GST Act are not covered by sub-section (2) of section 169 of the GST Act. Therefore, the appeal preferred by the petitioner on 13/14.04.2023 was within limitation as the date of communication of the order was 22.03.2023, when the petitioner for the first time became aware of the order dated 03.12.2021, but the respondent no. 2 arbitrarily dismissed the appeal as barred by time.

Matter requires consideration.

Learned counsel for the respondents may file counter affidavit within a period of four weeks from today.

In the counter affidavit, the State shall specifically averred as to how and under what manner, the deeming service as per clauses (c) & (d) of sub-section (1) of section 169 can be said to be deemed service as per sub-section (2) of section 169 of the GST Act.

List as fresh on 11.09.2023, along with Writ Tax No. 948/2023.

In the meantime, no coercive action shall be taken against the petitioner pursuant to the impugned order, provided the petitioner deposits 50% of the disputed tax amount in accordance with law within a period of two weeks from today.

Any amount already deposited by the petitioner be adjusted against the deposit to be made under this order.

**Order Date :- 9.8.2023**

Amit Mishra