RAJASTHAN HIGH COURT
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# HIGH COURT OF JUDICATURE FOR RAJASTHAN
# AT JODHPUR

D.B. Civil Writ Petition No. 4240/2025
CNR: RJHC010165022025 | URN: CW / 6662U / 2025

Rajasthan High Court
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M/s. Kedar Nath Ganga Nath, Through Proprietor, Sh. Girdhar Lal S/o Shri Ram, Aged About 49 Years, Resident Of Ward No. 14, Near Sarkari School, Goluwala Niwadan, 24 Jrk, Goluwala, District - Hanumangarh (Raj.) Having Its Place Of Business At- Shop No. 107, Dhan Mandi, Goluwala, Hanumangarh (Raj.).

----Petitioner

Versus

1. Central Goods And Service Tax Department, Through The Commissioner, New Central Revenue Building, Statute Circle, Jaipur-Rajasthan.
2. Appellate Authority, Central Excise And Central Goods And Service Tax, State Tax Bikaner- Rajasthan.
3. Assistant Commissioner, Rajasthan Goods And Service Tax Department, Circle B, Hanumangarh- Ward Iii, Hanumangarh-Rajasthan.

----Respondents

| | | |
|---|---|---|
| For Petitioner(s) | : | Mr. Nishit Shah. |
| For Respondent(s) | : | Mr. Mahaveer Bishnoi, AAG.<br>Mr. Rajat Arora. |

**HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL**
**HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU**

**Order**

**26/11/2026**

1. This instant writ petition is directed against the order dated 28.11.2024, whereby the Appellate Authority dismissed the appeal preferred by the petitioner questioning the order dated 17.01.2023 holding the appeal to be barred by limitation.

2. Learned counsel for the petitioner would submit that the order dated 17.01.2023, cancelling GST registration, was never

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communicated to the petitioner and appeal was filed on 19.11.2024.

3. Since the order was not communicated to the petitioner, therefore, he could not prefer appeal in time, but as soon as he came to know about the order, he immediately preferred an appeal on 19.11.2024. Therefore, there is no such delay in filing the appeal.

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4. As such Section 107(1) of Central/Rajasthan Goods and Service Tax Act, 2017 (hereinafter referred to as 'the Act of 2017') provides the appeal to be preferred within three months from date of such decision or order is communicated.

5. Learned counsel for the respondent-State supports the impugned order.

6. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

7. In order to consider the plea raised at the Bar, it would be appropriate to notice that Section 107(1) of the Act of 2017 as under:

> "**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."

8. A careful perusal of Section 107(1) of the Act of 2017 would show that against the Order-in-Original, an appeal would lie to the

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Appellate Authority within three months from the date on which the said decision or order is communicated to such person. As such, the Adjudicating Authority is required to communicate the order to the person aggrieved for the purpose of providing a remedy to the person adversely affected by the order and thereby limitation would commence from the date of communication. However, the word "communication" used in Section 107(1) has not been defined in the Act of 2017 or the rules made thereunder, therefore, the same deserves to be interpreted by applying the rule of contextual interpretation and keeping in view the language of the relevant provisions (see **Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission and others**[1]).

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9. The word "communication", according to Black's Law Dictionary (Sixth Edition), means, information given; the sharing of knowledge by one with another; conference; consultation or bargaining preparatory to making a contract. A "communication" is ordinarily considered to be a deliberate interchange of thoughts or opinions between two or more persons, as distinguished from "res gestae" expressions which are spontaneously or instinctively provoked, or made while under such shock or excitement as to preclude the possibility of design. The ordinary meaning of communicate is to impart, confer or transmit information (see **Union of India v. S.P. Singh**[2]).

1 (2010) 5 SCC 23
2 (2008) 5 SCC 438

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10. In the matter of **Kubic Darusz v. Union of India and others**[3], their Lordships of the Supreme Court while dealing with communication of grounds of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act), held that "communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation.

11. In the matter of **Collector of Central Excise, Madras v. M/s M.M. Rubber and Co., Tamil Nadu**[4], their Lordships of the Supreme Court while dealing with Section 35-E of the Central Excises and Salt Act, 1944 held that if the intention is to provide a remedy to the person adversely affected, the statutory provision has to be so constituted that limitation commences from the date of communication of order, and observed in paragraph 18 as under:

> "**18.** Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

12. Similarly, in the matter of **Municipal Corporation of Delhi v. Qimat Rai Gupta and others**[5], their Lordships of the Supreme

3 (1990) 1 SCC 568
4 1992 Supp (1) SCC 471
5 (2007) 7 SCC 309

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Court have held that an order ordinarily would be presumed to have been made when it is signed. It is required to be communicated where communication thereof is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby. Their Lordships further held that the word "made" occurring in Section 126(4) of the Delhi Municipal Corporation Act, 1957 cannot be construed to mean that unless the order is communicated, it should be deemed to have not been made.

13. In the matter of **D. Saibaba v. Bar Council of India and another**[6], the question before the Supreme Court was whether the limitation period for filing a review under Section 48AA of the Advocates Act, 1961, should commence from the date of the order or its communication. Their Lordships of the Supreme Court reasoned that the limitation period should start from the date of communication or knowledge of the order, aligning with principles of fairness and practicality. Their Lordships allowed the appeals, set aside the Bar Council's orders, and restored the appellant's (therein) enrollment as an advocate. Their Lordships further held in paragraph 14 as under:

> "**14.** How can a person concerned or a person aggrieved be expected to exercise the right of review conferred by the provision unless the order is communicated to or is known to him either actually or constructively? The words "the date of that order", therefore, mean and must be construed as meaning the date of communication or knowledge, actual or constructive, of the order sought to be reviewed."

14. Coming to the facts of the case in light of the provisions contained in Section 107(1) of the Act of 2017 and in light of

6 (2003) 6 SCC 186

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principles of law rendered by their Lordships of the Supreme Court in that regard, it is quite vivid that Section 107(1) mandates that the purpose of communication of order by the Adjudicating Authority is for the purpose of enabling the person aggrieved to file appeal before the Appellate Authority challenging the order so communicated and that period is also specifically provided to be three months from the date of communication of such decision to him by the Adjudicating Authority. In this case, the power to condone the delay in filing the appeal has been restricted to the Appellate Authority for a further period of one month in addition to three months, as specified in Section 107(1) of the Act of 2017. Therefore, considering the period of limitation to file appeal as three months + one month = four months, appeal can be preferred within three months from the date of communication of the order or decision and delay of one month in filing the appeal can be condoned. Therefore, the order has to be mandatorily communicated and the person aggrieved must be communicated with the decision or order. In other words, the party affected by the order or decision must know it, actually or constructively, and the period of three months would start running from the date of communication to the person affected of order by the authority concerned.

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15. However, Section 169 of the Act of 2017, which provides for service of notice in certain cases, states as under:

> "**169. Service of notice in certain circumstances.-** (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:

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(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

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(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

16. According to Section 169 of the Act of 2017, any decision, order, summons, notice shall be served by any one of the methods, as prescribed in clauses (a) to (f), reproduced hereinabove. However, clause (a) to (c) would be alternative and if

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not applicable, then clause (d) to (f) would be followed. Sub section (2) of Section 169 provides that every decision, order, summons, notice shall be deemed to have been served on the date on which it is tendered or published, or a copy thereof is affixed in the manner provided in sub-section (1).

17. In this regard, the decision of the Supreme Court in **Saral Wire Craft Private Limited vs. Commissioner of Customs, Central Excise and Service Tax and others**[7] may be noticed herein in which their Lordships of the Supreme Court while considering the provisions contained in Section 37C of the Central Excise Act held that every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. It has been observed by their Lordships as under:

> "7. It is an anathema in law to decide a matter without due notice to the party concerned. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. …
>
> 9. It is in these circumstances that we are of the clear conclusion that a miscarriage of justice has taken place, in that the authorities/courts below have failed to notice the specific language of Section 37-C(1)(a) of the Act which requires that an order must be tendered on the person concerned or his authorised agent, in other words, on no other person, to ensure efficaciousness. We must immediately recall the decision in Taylor v. Taylor9 rendered venerable by virtue of its jural acceptance and applicable for over a century. It was approved by the Privy Council in Nazir Ahmad v. King Emperor and was subsequently applied in Rao Shiv Bahadur Singh v. State of Vindhya Pradesh, State of U.P. v. Singhara Singh, Babu Verghese v. Bar Council of Kerala and more recently in Hussein Ghadially v. State of Gujarat. As observed by this Court in Babu Verghese (supra): (SCC p. 432, para 31)

7 (2015) 14 SCC 523

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> "31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all."

18. Considering the provisions of Section 169 of the Act of 2017, which provides the manner of serving the copy of decision or order, summons, notice, it is quite vivid that the purpose of communicating the order to the person aggrieved, in this case the petitioner herein, is for the purpose of enabling him to prefer an appeal against the order of the Appellate Authority, as only three months period has been provided from the date of communication to prefer appeal and the Appellate Authority is empowered only to condone the delay for further one month and thereafter, after three months + one month, no further jurisdiction has been conferred to the Appellate Authority to condone the delay.

19. As such, there is complete exclusion of Section 5 of the Limitation Act, as held by the Supreme Court in the matter of **Singh Enterprises V. Commissioner of Central Excise, Jamshedpur and others**[8]. Therefore, the Adjudicating Authority was obliged to strictly comply with the provisions contained in Section 107(1) of the Act of 2017 read with Section 169(1) of the Act of 2017 and communicate the order to the person aggrieved, which, in the present case, has not been done and only the order has been uploaded on the GST Portal, as submitted by the learned counsel for the Revenue, which, in our considered opinion, would not amount to the communication of order in terms of Section 107(1) of the Act of 2017.

8 (2008) 3 SCC 70

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20. Since the provision relating to communication has to be construed strictly and even, as stated by the learned counsel appearing for the Revenue, in accordance with Section 107(1) read with Section 169(1) of the Act of 2017, the petitioner was never communicated with the order passed by the Adjudicating Authority in order to enable him to file the appeal. As such, the period of limitation of three months would not start running unless the order in question is served by the Adjudicating Authority.

21. It is to be noted that the Rules are creature of a Statute and the Rules cannot circumscribe the mode that had been provided under the Statute. The Statute under Section 107 mandates communication of the order to the person aggrieved by registered post/ e-mail, etc.

22. The Rules cannot be limited to only serving it through electronic modes. The provision contained in Section 107(1) of the Act of 2017 qua communication to the affected party is mandatory in nature and unless the order is communicated to affected person, the period of limitation would not start running. As such, the Appellate Authority is absolutely unjustified in holding that the appeal is barred by limitation.

23. Accordingly, the impugned order dated 28.11.2024 is set aside, and as according to the learned counsel for the petitioner, the petitioner immediately after coming to know about the order filed the appeal on 19.11.2024, the delay in filing the appeal is condoned and the matter is remanded back to the Appellate Authority for hearing and deciding the appeal afresh on merits.

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24. With the above observations, the petition stands allowed to the extent indicated hereinabove. Pending application, if any, stands disposed of.

25. It is made clear that this Court has not expressed any opinion on the merits of the matter.

**(BALJINDER SINGH SANDHU),J** **(SANJAY K. AGRAWAL),CJ**

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