**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Writ Petition (T) No. 90 of 2020**

1. M/s Vinod Kumar Jain (A Partnership Firm Under The Relevant Provisions Of The Partnership Act) Having Its Office At College Road, Jashpurnagar, Chhattisgarh Pin 496331, Through Its Partner, Vinod Kumar Jain, Son Of Hanuman Prasad Jain, Aged Around 55 Years, Resident Of College Road, Jashpurnagar, District Jashpur, Chhattisgarh
2. Vinod Kumar Jain S/o Hanuman Prasad Jain, Aged About 55 Years, R/o College Road, Jashpurnagar, District Jashpur, Chhattisgarh

**---- Petitioners**

**Versus**

1. Additional Commissioner (Appeals) Of Chhattisgarh State Tax (G S T ) North Block, Sector - 19, Atal Nagar, Raipur, Chhattisgarh
2. Joint Commissioner Of Chhattisgarh State Tax (Gst) Bilaspur Division No. 2, Ambe Plaza, In Front Of New High Tech Bus Stand, Tifra, Bilaspur, District Bilaspur, Chhattisgarh
3. Union Of India Through The Secretary, Department Of Revenue, Ministry Of Finance North Block, Central Secretariat, New Delhi - 110001

**---- Respondents**

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| For Petitioners | : | Mr. Hari Agrawal, Advocate |
| For State | : | Mr. S. Dubey, Dy. Govt. Advocate |
| For Union of India | : | Mr. Ramakant Mishra, ASG |

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**Hon'ble Shri Justice P. Sam Koshy**

**Order On Board**

**07.10.2020**

1. The challenge in the present writ petition is to the order Annexure P-1

dated 30.06.2020 whereby the appeal preferred by the petitioner firm under Section 107 (1) of the CGST Act, 2017 has been rejected on the ground of the same being barred by limitation.

**2.** The contention of the learned counsel for the petitioners is that the order dated 27.06.2019 under section 73(9) of the GST Act passed by the assessing authority was never served upon the petitioner firm. He submits that the said order was never communicated physically to the petitioners nor did the petitioners find the same electronically uploaded to their GST portal and therefore, the petitioner firm was not in a position to promptly prefer an appeal. According to the petitioners, this aspect was brought to the notice of the appellate authority who has failed to consider the same and has mechanically rejected the appeal vide impugned order dated 30.06.2020.

**3.** Counsel for the petitioners further submits that subsequent to the petitioners coming to know about the impugned order having been passed by the assessing authority, they had immediately preferred an appeal before the appellate authority along with an application for condonation of delay. Subsequently, the appellate authority vide order dated 04.03.2020 Annexure P-10 had called for an explanation of the petitioner as to why his appeal should not be rejected on the ground of limitation. It is contended that the petitioner immediately appeared before the authority and gave a reply to the said notice dated 04.03.2020 clearly apprising the appellate authority that the order was not physically served nor was it electronically uploaded in the GST portal of the petitioner thereby the petitioner has been prevented from filing the appeal timely.

**4.** Learned State counsel, at this juncture, submits that under the provisions of law, it is required that the order under Section 73(9) of the CGST Act has to be served upon the petitioner/assessee. He further submits that considering the advancement of technology and also for ensuring prompt service, normally the orders are uploaded electronically also. He submits that the appellate authority seems to have gone through the submission that the petitioners had made in their application for condonation of delay particularly in paragraph-3 wherein they are referring DRC-07 as also e-notice and e-order and have not referred as order under Section 73(9) of the CGST Act.

**5.** Learned counsel for the petitioners disputes the fact that it was even electronically uploaded upon the GST portal and submits that this aspect is one which needs verification.

**6.** Given the said facts, in the opinion of this Court, the appellate authority in rejecting the application for condonation of delay and as a consequence rejecting the appeal vide his impugned order dated 30.06.2020 on the ground of delay, does not seem to be proper, legal and justified.

**7.** The appellate authority ought to have given a fair consideration to the contentions of the petitioner and ought to have got it verified whether the order was duly served either physically or electronically to the petitioner and only then should have taken a decision. In the absence of any such exercise and deciding the application for condonation of delay only on the basis of the pleadings, the impugned order, in the opinion of this Court, is not sustainable and the same deserves to be and is accordingly set aside.

**8.** The matter stands remitted back to the appellate authority i.e. respondent no.1 to consider and decide the application of the petitioner for condonation of delay on its own merits after due verification of the facts and also on due consideration of the contentions that the petitioner has raised in the application for condonation of delay and in his reply to the show cause notice dated 04.03.2020 Annexure P-10 issued to the petitioner.

**9.** The writ petition accordingly stands disposed of.

**Sd/-**
**P. Sam Koshy**
**Judge**

Khatai