HIGH COURT OF MADHYA PRADESH : JABALPUR

W.P. No.21978/2019

M/s Lakhan Singh Chauhan and Company

-Versus-

Union of India and others

W.P. No.22712/2019

M/s Parmanand Traders

-Versus-

Union of India and others

W.P. No.462/2020

M/s Navaakar Real Estates

-Versus-

Union of India and others

CORAM :

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice.

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Shri Nitin Agrawal, Advocate for the petitioner in W.P. No.21978/2019.
Ms. Sweta Yadav, Advocate for the petitioner in W.P. No.22712/2019.
Shri Pushpendra Yadav, Advocate for the petitioner in W.P. No.462/2020.
Shri G.S. Thakur and Shri Himanshu Sahani, Advocates for the respondents.

Whether approved for reporting :

O R D E R

(Jabalpur dt.: 25.2.2020)

Per : Vijay Kumar Shukla, J.-

Regard being had to the similitude of the issue involved in the present cases. They are being decided by this common order. For the sake of convenience, the facts are noted from W.P. No.462/2020 (*M/s Navaakar Real Estates vs. Union of India and others*).

2. These are the writ petitions filed under Article 226 of the Constitution of India being aggrieved by the order passed by the respondent No.3/Joint Commissioner cum Appellate Authority for State Goods and Service Tax, Bhopal by which he has rejected the appeal filed by the petitioner being aggrieved by the order passed by the Sales Tax Officer on the ground of delay.

3. The facts, in short, are that the respondent No.5 issued a show cause notice on 14.1.2019 under Section 29(2) of Central Goods and Service Tax Act, 2017 (in short, hereinafter referred as "GST Act") for cancellation of GST Registration on the ground that the petitioner has failed to furnish the return for continuous period of six months and accordingly directed to furnish the return within seven working days. According to the petitioner, the said show cause notice was not served to the petitioner, therefore, the petitioner could not file the return within the stipulated seven working days and accordingly the GST Registration of the petitioner got cancelled by the Sales Tax Officer. As and when the said information came to his knowledge, the petitioner filed an appeal under Section 107 of the GST Act and the same has been rejected by the impugned order on the ground of delay.

4. Learned counsel for the petitioner urged that the impugned order is contrary to the provisions of Section 107 of the GST Act. The period of limitation as per the provisions of Section 107, starts from the date of communication of the order passed by the authority. He has drawn attention of this Court to memo of appeal wherein a specific stand was taken that the notice was issued to the appellant through e-mail belonged to erstwhile consultant of the appellant who did not forward the e-mail to

the appellant nor communicated regarding receipt of such e-mail. According to him, as soon as he came to know about the impugned order, he filed an appeal and therefore, the limitation ought to have been counted from the date of communication of the impugned order to the petitioner or when the said order came to his knowledge. It is further argued that the aforesaid facts have not been considered by the appellate authority while passing the impugned order.

5. Learned counsel for the respondents supported the impugned order and stated that communication to the erstwhile consultant would amount to valid communication to the petitioner.

6. We have heard learned counsel for the parties, perused the record and gone through the impugned order. We find that in the impugned order, there is no consideration to the grounds mentioned in the memo of appeal regarding non-communication of the order to the petitioner and start of period of limitation from the date of communication or knowledge of the order. The appellate authority has passed the said order without considering the aforesaid grounds.

7. In view of the same, all the writ petitions are allowed. The impugned order passed by the appellate authority is quashed and the matter is remanded back to the appellate authority to decide the question of delay afresh without being influenced by the previous order.

8. Accordingly, all the writ petitions are **allowed and disposed of.**

(Ajay Kumar Mittal)
Chief Justice

(Vijay Kumar Shukla)
Judge

PK