

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9331 OF 2022

Ramani Suchit Malushte ...Petitioner

V/s.

Union of India and Ors. ...Respondents

Mr. Ishaan Patkar a/w Ms. Chaitali Raul i/b Lilesh Sawant for Petitioner.

Ms. S.D. Vyas "B" Panel Counsel for State.

Mr. J.B. Mishra a/w Mr. Ram Ochani for Respondent Nos.3 and 4.

CORAM : K.R. SHRIRAM &

A.S. DOCTOR, JJ.

DATED : 21st SEPTEMBER 2022

P.C. :

1. Petitioner is impugning an order passed on 2nd August 2021 but issued on 4th August 2021 by which petitioner's appeal came to be dismissed on the ground that appeal was not filed within a period of three months provided under Section 107(1) of The Central Goods and Services Tax Act, 2017 (the CGST Act) and in any case the appeal was delayed more than one month provided under Sub Section 4 of Section 107 of the CGST Act.

2. Section 107(1) and (4) of the CGST Act reads as under :

(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.

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(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting

the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

Therefore, any person aggrieved by any decision or order passed under the Act may apply to the Appellate Authority within three months from the date on which such decision or order is communicated to such person. Rule 26(3) of the Central Goods and Services Tax Rules, 2017 (the CGST Rules) and it is *pari materia* with Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in that behalf. Form GST-REG which was notified under the Rules for the purpose of passing order for cancellation of registration specifically requires the signature of the officer passing the order. Respondent has not denied that any order passed by respondent requires to be digitally signed and certified.

3. It is petitioner's case that the order in original dated 14th November 2019 which was impugned in the appeal filed before Respondent No.3 has not been digitally signed. Therefore, it was not issued in accordance with Rule 26 of the CGST Rules. Hence, the time limit for filing the appeal would begin only upon digitally signed order being made available.

4. Averments in paragraph Nos.6, 7 and 8 of the petition reads as under :

6. *With respect to the issue of limitation, the order which is appealed against, which is the Order for Cancellation of Registration dated 14 November 2019, is not signed by the Respondent No.4 who has issued the order. The said order is merely uploaded on the GST Portal without any signature. The signature was affixed for the first time only on 19 May 2021 when Petitioner had to get an attestation from Respondent No.4 for the purposes of filing appeal. This attestation was required precisely because the Order for Cancellation of Registration dated 14 November 2019 was not signed.*

7. *Rule 26(3) of the Central Goods and Services Tax Rules, 2017 and the pari materia Maharashtra Goods and Services Tax Rules, 2017 requires orders issued under Chapter III of the rules to be authenticated by a digital signature certificate or through E-signature or by any other mode of signature or verification notified in this behalf. The Form GST-REG 19 which was notified under the Rules for the purposes of passing order for cancellation of registration specifically requires the signature of the officer passing the order.*

8. *Thus, the limitation period for filing the appeal against the Order for Cancellation of Registration dated 14 November 2019 never began because the Order was not signed in accordance with the rules. Alternatively, the limitation period began only from 19 May 2021 which is the date on which the signature of the Respondent No.4 was put on the order for the purposes of "attestation". The Order of Cancellation of Registration dated 14 November 2019 as well as the First Appeal Order dated 4 August 2021 are therefore liable to be quashed and set aside.*

In the affidavit in reply it is not denied that the order in original dated 14th November 2019 was not digitally signed. In the affidavit in reply it is specifically stated that the show cause notice was digitally signed by the issuing authority but when it refers to the order in original dated 14th November 2019 there is total silence about any digital signature being put by the issuing authority. Conveniently, respondent stated that petitioner cannot take stand of not receiving the signed copy because the unsigned

order was admittedly received by petitioner electronically. However, if this stand of respondent has to be accepted, then the Rules which prescribe specifically that digital signature has to be put will be rendered redundant. In our view, unless digital signature is put by the issuing authority that order will have no effect in the eyes of law.

5. In the circumstances, we have to agree with petitioner's stand that only on the date on which the signature of Respondent No.4 issuing authority was put on the order dated 14th November 2019 for the purpose of attestation, time to file appeal would commence.

6. In the circumstances, we hereby quash and set aside the impugned order. The appeal is restored to file of Respondent No.3 who shall consider the appeal on merits and pass such order as deemed fit in accordance with law.

7. Before passing any order, personal hearing shall be given to petitioner with atleast seven working days advance notice. The order passed shall be a reasoned order.

8. Petition disposed.

9. We clarify that we have not made any observations on the merits of the matter.

(A.S. DOCTOR, J.)

(K.R. SHRIRAM, J.)