2025:AHC:229995-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 2707 of 2025

M/S Bambino Agro Industries Ltd

…..Petitioner(s)

Versus

State of Uttar Pradesh and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Pranjal Shukla
Counsel for Respondent(s)	:	C.S.C., Gopal Verma

Along with :

1. **Writ Tax No. 1286 of 2025:**
   Gopala Trading Company
   Versus
   State of U.P. and another

2. **Writ Tax No. 2399 of 2025:**
   M/S Dot Onn Business Solution Pvt. Ltd
   Versus
   Assistant Commissioner Ghaziabad

3. **Writ Tax No. 2722 of 2025:**
   M/S Singh Associates
   Versus
   State of Uttar Pradesh and another

4. Writ Tax No. 2783 of 2025:
M/S Vrinda Polymer
Versus
State of Uttar Pradesh and another

5. Writ Tax No. 3098 of 2025:
Shivalik Sales
Versus
State of U.P. and 2 others

6. Writ Tax No. 3101 of 2025:
Bachche Lal Gupta
Versus
State of U.P. and another

7. Writ Tax No. 3103 of 2025:
Shivalik Sales
Versus
State of U.P. and 2 others

8. Writ Tax No. 3927 of 2025:
Durgesh Automobiles
Versus
State of Uttar Pradesh and 2 others

9. Writ Tax No. 3928 of 2025:
Durgesh Automobiles
Versus
State of Uttar Pradesh and 2 others

10. Writ Tax No. 3938 of 2025:
Durgesh Automobiles
Versus
State of Uttar Pradesh and 2 others

11. Writ Tax No. 4625 of 2025:
M/S Jay Bholey Transport Company
Versus

State of Uttar Pradesh and another

12. Writ Tax No. 7362 of 2025:
M/S Futureworld Greenhomes Private Limited
Versus
The Union of India and another

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.

(Per Saumitra Dayal Singh, J.)

1. Heard Sri Pranjal Shukla along with Sri Gauransh Mishra and Sri Parth Goswami, Ms. Pooja Talwar, Sri Vedant Agrawal and Sri Rishi Raj Kapoor, Sri Anup Shukla holding brief of Sri Devansh Mishra, Ms. Akashi Agarwal and Sri Vishwaraj Singh on behalf of petitioners; Sri Anoop Trivedi learned Additional Advocate General assisted by Sri Arvind Kumar Mishra and Sri Ankur Agarwal learned Standing Counsel for the State of Uttar Pradesh, Sri S.P. Singh learned ASGI assisted by Sri Gopal Verma for the Union of India and the GSTN, and Sri Gaurav Mahajan and Sri Amit Mahajan for the central revenue authorities. Also, we have taken assistance of Sri Praveen Kumar, as *amicus curiae*.

2. Present batch of petitions has been filed by different petitioners assailing individual Adjudication Orders passed against them, under the UPGST Act, 2017 (hereinafter referred to as the ‘State Act’) and the CGST Act, 2017 (hereinafter referred to as the ‘Central Act’). At the outset, strong preliminary objection has been raised by the revenue as to maintainability of these petitions. It has been submitted that the Adjudication Orders are appealable. Therefore, the present petitions

may not be entertained, and the individual petitioners be relegated to the forum of alternative remedy. Learned counsel for petitioners have met the preliminary objection on the strength of fact assertion that neither the Show Cause Notice nor the Order in Original/Adjudication Order was served on the petitioners, at the relevant time. Only on recoveries being initiated or other consequential steps being taken by the revenue authorities, they acquired knowledge about the Adjudication Orders passed and/or recoveries pressed thereunder. By that time, the hard period of limitation prescribed under Section 107 (1) read with (4) of the State/Central Act, namely, 120 days (including only 30 days for condonation of delay), expired. In face of the law as has been laid down by the Supreme Court in **Commissioner of Customs & Central Excise vs Hongo India Pvt. Ltd.; (2009) 5 SCC 791** and **Assistant Commissioner (CT) LTU, Kakinada vs Glaxo Smith Kline Consumer Health Care Limited; (2020) 19 SCC 681**, the petitioners have been left remediless under the enacted law. Therefore, they have been constrained to approach this Court under its extraordinary writ jurisdiction.

3. In all cases, Adjudication Orders and the Show Cause Notices preceding those orders and the impugned orders are described to have been served on the individual petitioners by the revenue authorities - by uploading and thus making them available on the Common Portal, designed and managed by GSTN, a corporation of Union of India. Details of the Adjudication Orders involved in this batch, together with dates are tabluated below:

Writ Tax No.	**Adjudication Order date**	**Passed under Section**
2707 of 2025	20.04.2024	73 of the U.P.G.S.T. Act, 2017
1286 of 2025	20.08.2024	73 of the U.P.G.S.T. Act, 2017

2399 of 2025	24.08.2024	73 of the U.P.G.S.T. Act, 2017
2722 of 2025	21.08.2024	73 of the U.P.G.S.T. Act, 2017
2783 of 2025	27.08.2024	73 of the U.P.G.S.T. Act, 2017
3098 of 2025	27.08.2024	73 of the U.P.G.S.T. Act, 2017
3101 of 2025	21.09.2024	74 of the U.P.G.S.T. Act, 2017
3103 of 2025	15.02.2025	73 of the U.P.G.S.T. Act, 2017
3927 of 2025	31.12.2024	74 of the U.P.G.S.T. Act, 2017
3928 of 2025	12.08.2024	74 of the U.P.G.S.T. Act, 2017
3938 of 2025	31.12.2024	74 of the U.P.G.S.T. Act, 2017
4625 of 2025	22.08.2024	73 of the U.P.G.S.T. Act, 2017
7362 of 2025	04.05.2024	73 of the C.G.S.T. Act, 2017

4. In such facts, a question has arisen-if the orders impugned in the individual writ petitions have been ‘communicated’ to the individual petitioners, within the meaning of that word used in Section 107 of the State/Central Act? Unless the orders to be appealed are effectively ‘communicated’ to the person aggrieved (by that order), who may then seek an appeal remedy thereagainst, the period of limitation of three months to file such appeal, may not start running.

5. The word ‘communicated’ is not defined under the State/Central Act. However, learned counsel appearing for either party have referred to Section 169 of those Acts as also Sections 4, 12 and 13 of the Information Technology Act 2000 (hereinafter referred to as the ‘IT Act’).

6. Seen in that light, a legal issue has arisen - if a Show Cause Notice or other notice or order passed either under the State Act or the Central Act may be found served or may be found ‘deemed served’ in terms of Section 169 of the State/Central Act, on such person, upon it being uploaded and thus made available on the Common Portal of the

GSTN, or on dispatch of electronic mail at the email address provided by the affected person, at the time of obtaining registration? In that context, the effect of sending an SMS alert with respect to issuance of such notice or order, may also be examined.

7. In view of such purely legal issues involved, these writ petitions have been entertained in the following factual background and legal context.

8. The legislative context in which the issue has arisen needs closer scrutiny. Prior to the 101st Constitution Amendment (that enabled enactment of the Goods and Service Tax laws), there pre-existed in the State of Uttar Pradesh, other taxation enactments. Upon independence, the U.P. Sales Tax Act, 1948 was enacted by the State legislature and Rules were framed thereunder. Parallelly, the Parliament enacted the Central Sales Tax Act, 1956 and framed Rules thereunder, for the purpose of taxation of inter-state sales of goods. After five decades, in 1994 U.P. Sales Tax Act, 1948, was rechristened as U.P. Trade Tax Act, 1948. However, no material change arose in the context of the issue raised before us. Later, the U.P. Value Added Tax Act, 2008 was enacted. It remained in force till 30th June 2017. Also, there existed laws relating to Income Tax, Central Excise and Service Tax, besides Customs duty and Service Tax. Under those laws, there existed procedures for issuance and service of notices and orders as also there existed provisions for limitation, to file appeals and seek condonation of delay thereunder. Further, there pre-existed (under the Sales Tax laws) another provision with respect to recall of *ex parte* orders passed by the Assessing Authorities.

9. Upon enactment of the State/Central Act, the above-mentioned provisions have undergone a transformative change, affecting the vital

behavioral responses of the assessees. Relevant to the State of Uttar Pradesh, we may extract and highlight, in tabular form, some of the changes that have been caused upon enforcement of GST regime, in supersession of the U.P. Trade Tax Act, 1948 and U.P. Value Added Tax Act, 2008. Those are as below:

Act	Service of Notices/Orders	Appeal	Remand/ Recall
U.P Trade Tax Act, 1948	***Rule 77. Method of service. –*** *(1) The service of any notice, summons or order under the Act or the Rules may be effected by any of the following methods, namely:* *(a) by giving or tendering a copy thereof to the dealer or person concerned or to his manager, munim, accountant or agent, or to one of his employees or to any audit member of his family residing with him];* *(b) by registered post:* *Provided that if, upon an attempt having been made to serve any such notice, summons order by either of the above said methods, the authority concerned has reasonable ground to believe that the addressee is evading service or that, for any other reason which in the opinion of such authority is sufficient, service cannot be effected by any of the above said methods, the said authority shall, after recording the reasons therefore, cause the notice, summons or order to be served by affixing a copy thereof-* *(i) if the addressee is a dealer, on some conspicuous part of the dealer's place of business or the building in which the dealer's place of business is located, or upon some conspicuous part of the place of the dealer's business last intimated to the said authority by the dealer or of the place where the dealer is known to have last carried on business or the place where the dealer resides; or* *(i) if the addressee is not a dealer on some conspicuous part*	***Section 9: Appeal*** *(1) Any dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in section 10A or sub-section (6) of section 13A, may, within thirty days from the date of service of the copy of the order, appeal to such authority as may be prescribed: PROVIDED that where the disputed amount of tax, fee or penalty does not exceed one thousand rupees, the appellant may, at his option, request the appellate authority in writing for summary disposal of his appeal, whereupon the appellate authority may decide the appeal accordingly.* *(3) The appellate authority may, after calling for and examining the relevant records and after giving the appellant and the Commissioner a reasonable opportunity of being heard or, as the case may be, after following the procedure prescribed under sub-section (1A)* *(a) In the case of an order of assessment or penalty,* *(i) confirm or annul such order; or* *(ii) vary such order by reducing or enhancing the amount of assessment or penalty, as the case maybe, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise; or* *(iii) set aside the order and direct the assessing authority to pass a fresh order after such*	***Section 30. Power to set aside an order of assessment or an order in appeal*** *Power to set aside an order of assessment or an order in appeal* *(1) In any case in which an order of assessment or penalty is passed ex parte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and reopen the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing:* *PROVIDED that no such application for setting aside an ex parte assessment order shall be entertained unless it is accompanied by*

	of his residence or office of the building which his office or residence is located ; and such service shall be deemed to be as effectual as if it had been made on the addressee personally. *(2) When a process server, peon or any other employee of the Trade Tax Department delivers or tenders any notice, summon or order to the dealer or addressee, personally or to any of the persons referred to in clause (a) of sub-rule (1) he shall require the persons to whom the notice, summons or order is delivered or tendered to sign an acknowledgment of the service of the notice, summons or order.* *(3) Where the person to whom the notice, summons or order is tendered as aforesaid refuses to accept the same or refuses to sign the acknowledgment after its acceptance the process server, peon or employee shall submit a report to the concerned authority standing facts about such refusal and the name, address of the person, if any, present at the time of such refusal. Such report shall be verified on oath by the process server, peon or employee. The concerned authority may, having regard to the facts and circumstances and after making such further enquiry in the matter, if any, as it thinks fit, consider such refusal to be proof of service.* *(4) When service is made by post, or acknowledgment purporting to have been signed by the addressee or his manager, munim, accountant or agent or an employee or member of his family or an endorsement by a postal employee that the addressee or his manager, munim, accountant or agent or employer or member of his family refused to take delivery may be deemed by the concerned authority to be proof of service.* *(5) When the notice, summons or order is served by affixing a copy thereof in accordance with the first proviso to sub-rule) the*	*inquiry as may be specified; or* *(iv) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report as been submitted or not, decide the appeal in accordance with the provisions of the preceding sub-clause; or* *(b) in the case of any other order confirm, cancel or vary such order:* *PROVIDED that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for enhancement of the assessment or penalty has been made.* *(6) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.*	*satisfactory proof of the payment of the amount of tax admitted by the dealer to be due.*

	official serving it shall return the original to the authority concerned with report endorsed thereon or annexed thereto stating t}}at he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified, and on whose presence the copy was affixed.. The said official shall also obtain the signature or thumb-impression identifying the addresse's residence or office or building or place of business to his report.		
U.P VAT Act, 2008	***Rule 72:****Mode of service –* *The service of any notice, summons or order under the Act or the Rules may be affected by any of the following methods, namely:* *(a) Service to be on dealer or person concerned in person when practicable, or on his agent wherever it is practicable service shall be made on the dealer or person concerned in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.* *(b) Service on agent by whom dealer or person concerned carries on business-* *In a case relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the authority from which the notice, summons or order is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service. (c) Service on an adult member of dealer or concerned person's family-* *Where in any case the dealer or person concerned is absent from his residence at the time when the service of notice, summons or order is sought to be effected at his residence and there is no*	***Section 55 : Appeal*** *(1) Any dealer or other person aggrieved by an order made by the assessing authority, other than an order mentioned in sub-section (7) of section 48 may, within thirty days from the date of service of the copy of the order, after serving a copy of appeal memo on the assessing authority or the Commissioner, appeal to such authority (hereinafter referred to as appellate authority), as may be prescribed:* *Provided that where due to any reason, any appellant fails to serve a copy of appeal memo on the assessing authority before filing appeal, he may serve copy of such appeal memo within a time of one week from the date on which appeal has been filed or within such further time as the appellate authority may permit.* *((5) The appellate authority may, after calling for and examining the relevant records and after giving a reasonable opportunity of being heard to the appellant and the Commissioner- (a) in the case of an order of assessment and penalty.- (i) confirm or annul such order ; or (ii) vary such order by reducing or*	***Section 32. Power to set aside exparte order of assessment or penalty*** *(1)In any case in which an order of assessment or re-assessment or rejection of application for registration or order of penalty is passed exparte, the dealer may apply to the assessing authority within thirty days of the service of the order to set aside such order and re-open the case; and if such authority is satisfied that the applicant did not receive notice or was prevented by sufficient cause from appearing on the date fixed, it may set aside the order and reopen the case for hearing:* *Provided that no such application*

	likelihood of his being found at the residence within a reasonable timeand he has no agent empowered to accept service of the notice, summons or order on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. *Explanation: A servant is not a member of the family within the meaning of this rule.* *(d) Person served to sign acknowledgement-* *Where the process server delivers or tenders a copy of the notice, order or summons to the dealer or person concerned personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of service endorsed on the original notice, order or summons.* *(e) Procedure when dealer or person concerned refuses to accept or cannot be found –* *Where dealer or concerned person or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the process server, after using all due and reasonable diligence, cannot find the dealer or person concerned who is absent from his place of business or residence at the time when service is sought to be effected on him and there is no likelihood of his being found within a reasonable time and there is no agent empowered to accept service of the notice or order or summons on his behalf, nor any other person on whom service can be made, the process server shall affix a copy of the notice, order or summons on the outer door or some other conspicuous place in the house in which the dealer or person concerned ordinarily resides or carries on business or personally works for gain, and shall then return the original to the authority from which it was issued, with a report endorsed thereon or*	*enhancing the amount of assessment or penalty, as the case may be, whether such reduction or enhancement arises from a point raised in the grounds of appeal or otherwise ; or (iii) set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified; or (iv) direct the assessing authority to make such inquiry and to submit its report within such time as may be specified in the direction or within such extended time as it may allow from time to time, and on the expiration of such time the appellate authority may, whether the report has been submitted or not decide the appeal in accordance with the provisions of the preceding sub-clauses; or (b) in the case of any other order- (i) confirm, cancel or vary such order; or (ii)set aside the order and direct the assessing authority to pass a fresh order after such inquiry as may be specified:* *Provided that nothing in this sub-section shall preclude the appellate authority from dismissing the appeal at any stage with such observations as it deems fit where the appellant applies for withdrawal of the same and no request for examination of legality or propriety of order under appeal has been made by the Commissioner* *(7) Section 5 of the Limitation Act, 1963, shall apply to appeals or other applications under this section.*	*for setting aside an exparte assessment order shall be entertained unless it is accompanied by satisfactory proof of the payment of the amount of tax to be due under this Act on the turnover of sales or purchases, or both, as the case may be, admitted by the dealer in the returns filed by him or at any stage in any proceeding under this Act, whichever is greater.* *(2) Where an assessment order under sub-section (1) of section 25 is passed, exparte, the dealer may apply to the Assessing Authority within thirty days of the service of the order, to set aside such order and if such authority is satisfied that the dealer has filed the tax return and deposited the tax due according to the tax return within thirty days from the last day prescribed for filing such tax return, it may modify or set aside such order and also the demand notice, if any, issued thereunder.* *(3) In any case in which any assessment or re-*

	annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed. *(f) Endorsement of time and manner of service –* *The process server shall, in all cases in which the notice, order or summons has been served under clause (d), endorse or annex, or cause to be endorsed or annexed, on or to the original notice, order or summons, a return stating the time when and the manner in which the notice, order or summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice, order or summons.* *(g) Examination of the process server –* *Where a notice, order or summons is returned under clause(e), the authority shall, if the return under that rule has not been verified by the affidavit of the process server, and may, if it has been so verified, examine the process server on oath, or cause him to be so examined by another authority, touching his proceedings, and may make such further enquiry in the manner as it thinks fit: and shall either declare that the notice, order or summons has been duly served or order such service as it thinks fit.* *(h) Simultaneous issue of notice or order or summon for service by post in addition to personal service-* *(i) The authority shall, in addition to, and simultaneously with, the issue of notice, order or summons for service in the manner provided under this rule, also direct the notice, order or summons to be served by registered post, acknowledgement due, addressed to the dealer or person concerned, or his agent empowered to accept the service,*		*assessment has been made ex parte and –* *(a) appeal under section 55 against such order has been dismissed as barred by time;* *(b) in appeal before the Tribunal under section 57, order, passed by the Appellate Authority under section 55, has been confirmed; and* *(c) Commissioner or Additional Commissioner designated by the Commissioner, after giving reasonable opportunity of being heard to the dealer, is satisfied that-* *(i)dealer, at any stage during the period of assessment or reassessment proceedings, had no notice of initiation of such proceedings;* *(ii)as a result of ex parte assessment or reassessment, without proper basis amount of tax has been levied;* *(iii)undue hardship will be caused to the dealer if such assessed tax is realized from him; and* *(iv)if, after giving reasonable opportunity of being heard to the dealer, tax is*

	at the place where the dealer or person concerned, or his agent, actually and voluntarily resided or carries on business or personally works for gain. Provided that nothing in this sub-clause shall require the authority to issue a notice, order or summons for service by registered post, where, in the circumstances of the case, the authority considers it unnecessary. *(ii) when an acknowledgement purporting to be singed by the dealer or person concerned or his agent is received by the authority or the postal article containing the notice, order or summons is received back by the authority with an endorsement purporting to have been made by a postal employee to the effect that the dealer or person concerned or his agent had refused to take delivery of the postal article containing the notice, order or summons, when tendered to him, the authority issuing the notice, order or summons shall declare that the notice, order or summons had been duly served on the dealer or person concerned. Provided that where the notice, order or summon was properly addressed, prepaid and duly sent by registered post, acknowledgement due, the declaration referred to this sub-rule shall be made notwithstanding the fact that the acknowledgement having lost or mislaid, or for other reasons, has not been received by the authority within thirty days from the date of issue of the notice, order or summon* *(i) Substituted service-* *(i) Where the authority is satisfied that there is reason to believe that the dealer or person concerned is keeping out of the way for the purpose of avoiding service, or that for any other reason the notice, order or summons cannot be served in the ordinary way, the authority shall order the notice, order or*		*reassessed, demand created by earlier order of assessment or reassessment may stand reduced to a large extent, he may direct the assessing authority to set aside such ex parte order of assessment or reassessment and to make assessment or reassessment after affording reasonable opportunity to the dealer, if the dealer presents an application before the Commissioner within a period of sixty days from the date on which dealer receives the order passed by the Tribunal under section 57.*

	summons to be served by affixing a copy thereof in some conspicuous place in the office premises, and also upon some conspicuous part of the house (if any) in which the dealer or person concerned is known to have last resided or carried on business or personally worked for gain, or in such other manner as the authority thinks fit. *(ii) Where the authority acting under sub clause(i) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the dealer or person concerned is last known to have actually and voluntarily resided, carried on business or personally worked for gain.* *(iii) Effect of substituted service;- Service substituted by the order of authority shall be as effectual as if it had been made on the dealer or concerned person.* *(iv) Time for appearance to be fixed;- Where service is substituted by the order of authority, the authority shall fix such time for the appearance of the dealer or the concerned person as the case may require.* *(j) Service of notice, order or summon where the dealer or person concerned resides within the jurisdiction of another authority –* *A notice, order or summons may be sent by the authority by which it is issued, whether within or without the State, either by one of its process server or by post to any authority having jurisdiction in the place where the dealer or person concerned resides.* *(k) Duty of authority to which notice, order or summon is sent-* *The authority to which a notice, order or summons is sent under clause (j) shall, upon receipt thereof, proceed as if it has been issued by such authority and shall then return the notice, order or summons to the issuing authority, together with the*		

	record (if any) of its proceedings with regard thereto. *(l) Service on dealer or person concerned in prison –* *Where the dealer or person concerned is confined in a prison, the notice, order or summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the dealer or person concerned.* *(m) Service on civil public officer or on servant of railway or local authority -Where person concerned is a public officer (not belonging to the Indian military, naval or air forces), or is a servant of a railway or local authority, the authority may, if it appears to it that the notice, order or summons may be most conveniently so served, send it for service on the person concerned to the head of the officer in which he is employed together with a copy to be retained by the person concerned.* *(n) Duty of a person to whom notice, order or summon is delivered or sent for service-* *(i) Where a notice, order or summons is delivered or sent to any person for service under clause (l) or (m) above, such person shall be bound to serve it if possible, and to return it under his signature, with the written acknowledgement of the dealer or person concerned, and such signature shall be deemed to be evidence of service.* *(ii) Where for any reason service is impossible, the notice, order or summons shall be returned to the authority with a full statement of such reason and of the steps taken to procure service, and such statement shall be deemed to be evidence of nonservice. (o) Substitution of letter for notice, order or summon-* *(i) The authority may, notwithstanding anything hereinbefore contained, substitute for a*		

	notice, order or summons a letter signed by the authority where the dealer or person concerned is, in the opinion of the authority, of a rank entitling him to such mark of consideration. *(ii) A letter substituted under sub clause (i) shall contain all the particulars required to be stated in a notice, order or summons, and, subject to the provisions of sub clause (iii), shall be treated in all respects as a notice, order or summons.* *(iii) A letter so substituted may be sent to the dealer or person concerned by post or by a special messenger selected by the authority, or in any other manner which the authority thinks fit; and, where the dealer or the concerned person has an agent empowered to accept service, the letter may be delivered or sent to such agent.*		
Central Excise Act, 1944.	***Section 37C. Service of decisions, orders, summons, etc. —*** *(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,--* *(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due or by speed post with proof of delivery or by courier approved by the Central Board of Excise and*	***35. Appeals to [Commissioner (Appeals).—****(1) Any person aggrieved by any decision or order passed under this Act by a Central Excise Officer, lower in rank than a Principal Commissioner of Central Excise or Commissioner of Central Excise, may appeal to the Principal Commissioner of Central Excise or Commissioner of Central Excise (Appeals) [hereafter in this Chapter referred to as the Commissioner (Appeals)*	

	Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any; *(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;* *(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.*	*within sixty days from the date of the communication to him of such decision or order:* *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days].*	
Customs Act, 1962	***Section 153. Modes for service of notice order, etc.***— *(1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:--* *(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;* *(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;* *(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;* *(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or*	***128. Appeals to Commissioner (Appeals).***— *(1) Any person aggrieved by any decision or order passed under this Act by an officer of customs lower in rank than a Principal Commissioner of Customs or Commissioner of Customs] may appeal to the Commissioner* *(Appeals) within sixty days from the date of the communication to him of such decision or order:* *Provided that the Commissioner (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, allow it to be presented within a further period of thirty days.*	

	carried on business; or *(e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.*		
Finance Act, 1994	***Section 83. Application of certain provisions of Act 1 of 1944****.— The provisions of the following sections of the Central Excise Act, 1944, as in force from time to time, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise :- sub-section (2A) of section 5A, sub-section(2) of section 9A, 9AA, 9B, 9C, 9D, 9E, 11B, 11BB, 11C, 12, 12A, 12B, 12C, 12D, 12E, 14, 15, 15A, 15B, 31, 32, 32A to 32P, 33A, 35EE, 34A, 35F, 35FF, to 35O (both inclusive), 35Q, 35R, 36, 36A, 36B, 37A, 37B, 37C, 37D, 38A and 40.*	*SECTION 85. Appeals to the Commissioner of Central Excise (Appeals).* *(1) Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the Principal Commissioner of Central Excise or Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).* *(3A) An appeal shall be presented within two months from the date of receipt of the decision or order of such adjudicating authority, made on and after the Finance Bill, 2012 receives the assent of the President, relating to service tax, interest or penalty under this Chapter :* *Provided that the Commissioner of Central Excise (Appeals) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of two months, allow it to be presented within a further period of one month.*	*Section 83.*
Income Tax Act, 1961	***Section 282 of the Act read with Rule 127*** ***282.*** *(1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—* *(a) by post or by such courier*	***249. Form of appeal and limitation.*** *(2) The appeal shall be presented within thirty days of the following date, that is to say,-* *(a) where the appeal is under section 248, the date of payment of the tax, or* *(b)where the appeal relates to any assessment or penalty, the date of service of the notice of*	

	services as may be approved by the Board; or *(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or* *(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000); or* *(d) by any other means of transmission of documents as provided by rules made by the Board in this behalf.* *(2) The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.*	*demand relating to the assessment or penalty:* *Provided that, where an application has been made under section 146 for reopening an assessment, the period from the date on which the application is made to the date on which the order passed on the application is served on the assessee shall be excluded, or* *(c)in any other case, the date on which intimation of the order sought to be appealed against is served.*	
Goods & Service Tax Act, 2017	***Section 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:-* *(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* *(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*	*Section 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.* *(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order:* *Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or*	

	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.*	*confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:* *Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 or section 74A.*	

10. Thus, in short, it may be noted that the State/Central Acts seek to transform the pre-existing physical/offline mode of service of notices and orders as also filing of appeals, by enabling electronic modes, chiefly by employing the Common Portal of the GSTN. Thus, all communications between the authorities and the assessee are permitted through electronic mode, by way of a complete alternative to the offline/physical mode. At present, only hearings are permitted through offline mode. The faceless mechanism otherwise adopted under the Income Tax Act, 1961, does not find place under the GST regime, at present.

11. As noted above, by way of a direct consequence of the sudden transformative change introduced upon the enforcement of the GST laws, numerous challenges arose both to the assessees and the authorities. During this hearing, we had raised a query to Sri Gopal

Verma, learned counsel for GSTN if he could inform the number of complaints received by the GSTN (from inception) about the working of the Common Portal. Vide email communication dated 26.11.2025 received by Sri Gopal Verma, he has been apprised that 2,94,811 tickets evidencing that many complaints were received by GSTN, from both streams i.e. revenue authorities as also the assessees. Of those, 2,94,442 have been resolved and the balance 369 are in the process of being resolved. The tabular chart appended to the written instructions as have been made available to us (marked as 'X' and retained on record), is extracted below:

Year/Month	***ACI***	***Received***	***Resolved***	***Pending***
2017	*0*	*127375*	*127375*	*0*
2018	*0*	*36664*	*36664*	*0*
2019	*0*	*16531*	*16531*	*0*
2020	*0*	*16016*	*16016*	*0*
2021	*0*	*28701*	*28701*	*0*
2022	*0*	*13673*	*13673*	*0*
2023	*0*	*17721*	*17721*	*0*
2024	*0*	*13581*	*13581*	*0*
2025	*0*	*24549*	*24180*	*369*
Total	***0***	***2,94,811***	***2,94,442***	***369***

12. The present bench constitution has been dealing with similar issues (as involved in these cases), since 07.10.2025. Faced with a regular, unending flood of similar litigation, wherein effectively similar pleadings have been made by different assessees arising from 59 different districts of the State, we noticed that the common complaint/grievance of such assessees/petitioners remains that they had not been served or communicated the Show Cause Notice and/or

the Adjudication Order passed by the Adjudicating Authority, in their cases - almost all, issued by the State revenue authorities. Consistently, the State revenue authorities have maintained that they have disbanded the practice of service of physical notices (through Process Server and Post). As to the reason, only this much has been disclosed that Section 169(1) [chiefly sub-clause (c) and sub-clause (d)] permits the revenue authorities to serve notices and orders through electronic mode. Since the assessees are registered on the Common Portal, service of all such notices and orders is being affected through electronic mode only, except where registration itself may have been cancelled.

13. Observing that deliberate structural change to the legislation and the consequent executive/administrative action under the GST regime, it is further observed - the grievances of the assessees are three fold. First, the assessees are claiming violation of principles of natural justice occasioned by non-service of Show Cause Notices and Adjudication Orders (through physical/offline mode). Second, they are aggrieved that the hard period of limitation prescribed under Section 107 is being lost for reason of non-communication of the Adjudication Orders (though physical/offline modes). Third, neither the appeal authority (under the GST regime) has the power to set aside the Adjudication Order and remit the proceedings to the Adjudicating Authority to pass afresh order nor the Adjudicating Authority has the power (under the GST regime) to set aside an *ex parte* order, passed by it.

14. Cumulatively, the assessees are at loss of hearing at the first tier, which is the most crucial tier in tax litigation. Unless an assessee is given full opportunity to file objections/replies and unless he is heard

by the Assessing/Adjudicating Authority, the relief in the appeal remedy may itself become more difficult to avail, especially since the appeal authority may only pass an order on the merit dispute but it may not pass any order based solely on violation of procedure or rules of natural justice.

15. Primarily, on those considerations as have been noted in **M/s Riya Construction vs State of U.P. & 3 Ors; 2025:AHC:179271-DB,** we passed the below quoted order, in that case:

> *"1. Ms. Farheen, learned Advocate holding brief of Shri Santosh Kumar Srivastava, learned counsel for the petitioner, Shri Ankur Agarwal, learned counsel for the Revenue and perused the record.*
>
> *2. The present writ petition has been filed challenging the Adjudication Order dated 04.02.2025 passed under Section 73 of the UPGST Act passed by respondent no.3 creating a demand of tax of Rs.1,61,225.64/- for the FY 2020-21.*
>
> *3. Submission is, no show cause notice was ever issued to the petitioner prior to the impugned order being passed and in any case, no date of filing of reply or personal hearing was communicated to the petitioner before the impugned order came to be passed. Also, the date of service of the adjudication order has been doubted. Pleadings to that effect exist.*
>
> *4. In many similar matters arising from same/similar mistakes committed by the Adjudicating Authorities, we have been setting aside such orders, conditionally. Hundreds, if not thousands of petitions have arisen, on same or similar grounds, clearly indicating to the Court, widespread difficulties being faced by numerous registered persons.*
>
> *5. Primarily, it is being noted, show cause notices and adjudication orders are being served only through online mode. In that, many times alerts are not being sent to the noticees and in any case the notices and orders are often not readily visible on the GSTN Portal. Further, it has been noted, besides rigid/fixed period of limitation with limited power to condone the delay, the Appeal Authorities do not have the power to set aside/remand the proceedings, to the Adjudicating Authority. Thus, many times the right of appeal is lost to the aggrieved assessees, for reason of late service of Adjudication Order. Even, if the Appeal Authorities were to pass an order on merits, it would still take away one*

opportunity of hearing that is otherwise available to the noticee, to represent its case, under the scheme of the Act.

6. While there may be some merit in the objection being raised by the petitioner, that facts are otherwise, in the first place a coordinate bench in Mahaveer Trading Company Vs. Deputy Commissioner State Tax And Another, Neutral Citation No.- 2024:AHC:38820-DB, a coordinate bench took note of similar and other violations of rules of natural justice, by Adjudicating Authorities and thus set aside the Adjudication Order.

7. Again in another order passed by a coordinate bench in M/S Shubham Steel Traders Vs. State of U.P. and Another, Neutral Citation No2024: AHC:31108-DB, it has been observed as below:

> *"10. Rules of natural justice ensure fairness in proceedings. Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.*
>
> *11. By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct."*

8. In view of our consistent view in similar matters, no useful purpose would be served in keeping this writ petition pending or calling for counter affidavit, at this stage.

9. Accordingly, the writ petition is allowed and the impugned order is set aside, subject to the petitioner depositing Rs.16,000/- within a period of one month from today. Present writ petition is disposed of with the following directions:

(i) Subject to the above deposit being made by the petitioner, the Adjudicating Authority shall make available to the petitioner copy of the show cause notice together with any additional/supplementary notice etc issued in these proceedings together with copies of Relied Upon Documents ('RUDs' in short) within a period of two weeks from the date of compliance shown by the petitioner.

(ii) Petitioner shall file reply, if any, within a further period of four weeks therefrom.

(iii) Thereupon the respondent No. 3 shall fix appropriate date for hearing and communicate the same to the petitioner in the

manner prescribed by law with at least two weeks' advance notice.

(iv) Petitioner undertakes to cooperate and participate in the proceedings and not seek any undue or long adjournment.

10. It is expected that the proceedings thus remitted would be concluded within six months from the date the petitioner makes first compliance under this order and deposits the amount specified above."

16. We called for a report from the office as to the number of cases date-wise, in which **M/s Riya Construction (supra)** has been followed. The data (upto date) furnished by the office is as below:

Date	Number of cases
13.10.2025	83
14.10.2025	94
15.10.2025	43
16.10.2025	33
17.10.2025	30
27.10.2025	13
28.10.2025	14
29.10.2025	65
30.10.2025	28
31.10.2025	10
03.11.2025	23
04.11.2025	33
06.11.2025	34
07.11.2025	28
10.11.2025	57
11.11.2025	33
12.11.2025	30
13.11.2025	27
14.11.2025	50
15.11.2025	33

17.11.2025	31
18.11.2025	21
19.11.2025	39
20.11.2025	30
21.11.2025	40
24.11.2025	39
25.11.2025	27
26.11.2025	41
27.11.2025	44
28.11.2025	70
01.12.2025	36
02.12.2025	32
03.12.2025	77
04.12.2025	44
05.12.2025	47
08.12.2025	77
09.12.2025	52
10.12.2025	110
11.12.2025	61
12.12.2025	83
15.12.2025	83
16.12.2025	20
17.12.2025	114
18.12.2025	111
19.12.2025	213

17. Consequentially, more than 2300 cases have arisen and have been disposed of in the terms of **M/s Riya Construction (supra)**, including earlier in the day, today. However, that may (in a self-critical way), only reflect the rough and ready or minimum justice delivered, owing to extreme circumstances; existence of widespread grievances, and

need to serve the larger cause of justice. Citizens and other entities may be assessed to pay tax and demands made, only after being given a reasonable opportunity of being heard. Their right of appeal may not be curtailed, lightly. Also, precious revenue (to the State), may not stay locked in litigation, indefinitely. Thus, against payment of about 10% of the disputed demand of tax (which is the amount required to be deposited to file a statutory first appeal), such *ex parte* Adjudication Orders have been set aside and proceedings remitted to the Adjudicating Authorities, on the terms provided in individual orders. Barring cases where 10% amount is less than Rs. 5000/-, (there on the suggestion of the learned Standing Counsel, the condition of such deposit has been relaxed), and some cases involving penalty and interest demands only, all other proceedings have been remitted against deposit of 10% of the disputed demand of tax, sometimes, even in the absence of learned counsel for the individual petitioners - at the suggestion of the learned Standing Counsel. Largely, the quantum of disputed tax involved has been a few thousands or lakhs and only sometimes running into a crore or more. It indicates to us that the grievance has arisen to small and medium sized businesses.

18. However, we see no end to the litigation on this count. For reason of the considered stand taken by the State revenue authorities - that they propose to serve the Show Cause Notices and the Adjudication Orders through electronic mode only, and not through physical mode, the fact circumstance giving rise to such litigation may never end at least in the proceedings arising at the hands of the State revenue authorities.

19. As noted in earlier orders passed in these cases, we explored possibilities to encourage the executive - to find a solution to the problem. To the extent Section 169(1) admits of (amongst others), two other regular modes of service - through tender and dispatch by Speed Post, besides communication through electronic mode (either through Common Portal or through e-mail), we were of the opinion that the State Government may itself examine the issue first, and find an administrative solution to the problem. However, in face of the last written instructions dated 08.12.2025 issued by Dr. Nitin Bansal, Commissioner State Tax U.P., Lucknow, that possibility has ceased to exist. At the same time, it has been informed - where registration may have been cancelled, notices are being dispatched through physical mode. To the extent the learned Additional Advocate General made a further statement that the said written instruction is the last stand of the State in this matter, filing of affidavit has been dispensed. The said written instruction has been marked as 'Y' and retained on record. We consider it proper to extract the said instructions in entirety, as below:

> "***रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another एवं इससे सम्बद्ध अन्य वादों में मा० उच्च न्यायालय, इलाहाबाद के अंतरिम निर्णय दिनांक 26.11.2025 के संदर्भ में इंस्ट्रक्शन (Instruction)***
>
> *1. यह कि रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में मा० उच्च न्यायालय, इलाहाबाद के समक्ष दिनांक 11.11.2025 को सुनवाई के दौरान विभागीय पक्ष के रूप में इंस्ट्रक्शन प्रस्तुत किया गया था, जो निम्नवत है -*

A. दिनांक 01.07.2017 से लागू किये गये उ०प्र० वस्तु एवं सेवा कर अधिनियम, 2017 के अन्तर्गत समस्त कार्य ऑनलाइन किये जाने की अवधारणा रखी गयी थी एवं इस अधिनियम की धारा 169 में नोटिस/आदेश की तामीली (Service of Notice/Order) के विस्तृत प्रावधान भी किये गये हैं। चूंकि विभाग द्वारा जी०एस०टी० के अन्तर्गत समस्त कार्य जी०एस०टी०एन० पोर्टल के माध्यम से ऑनलाइन ही किये जाते हैं, ऐसी स्थिति में सामान्य कार्यप्रणाली में कोई भी नोटिस/आदेश अधिकारियों द्वारा जी०एस०टी०एन० पोर्टल के माध्यम से ऑनलाइन ही तामील कराये जाते हैं जो कि अधिनियम की धारा-169 के अनुरूप ही है। जी०एस०टी०एन० पोर्टल पर नोटिस/आदेश जारी किए जाने का मुख्य उद्देश्य कर अधिकारियों एवं करदाताओं के मध्य एक digital, transparent, और प्रभावी communication स्थापित करना भी है। यह प्रणाली अनुपालन की प्रक्रिया को सुव्यवस्थित करते हुए यह सुनिश्चित करती है कि दोनों पक्ष एक ही पोर्टल पर एक ही स्थान से अभिलेखीय सूचनाएँ प्राप्त कर सकें।

B. इस संदर्भ में विनम्रतापूर्वक निवेदन है कि यद्यपि प्रत्येक नोटिस/आदेश को करदाता को भौतिक रूप से तामील कराया जाना जी.एस.टी. व्यवस्था की मूल अवधारणा से सुसंगत नहीं है तथापि जहाँ करदाता का पंजीकरण (Registration) नोटिस/आदेश की तिथि से पूर्व निरस्त किया जा चुका हो, उन परिस्थितियों में नोटिस/आदेश की तामीली जी०एस०टी०एन०

पोर्टल पर उपलब्ध कराने के साथ-साथ भौतिक रूप से भी करायी जा सकती है।

2. यह कि रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में मा० उच्च न्यायालय, इलाहाबाद के समक्ष दिनांक 25.11.2025 को सुनवाई के दौरान विभागीय पक्ष के रूप में इंस्ट्रक्शन प्रस्तुत किया गया था, जो निम्नवत है -

A. यह कि रिट टैक्स संख्या-2707/2025, M/s Bambino Agro Industries Ltd. Vs. State of Uttar Pradesh & Another के वाद में जीएसटीएन द्वारा अनुपूरक प्रतिशपथ पत्र दाखिल किया गया , जिसके बिंदु संख्या 6 में यह उल्लेख किया गया है कि जीएसटी पोर्टल पर कर अधिकारियों द्वारा जारी किए गए नोटिस, आदेश आदि को करदाता ने कब खोला-इसका कोई रिकॉर्ड लॉग (LOG) सिस्टम में नहीं बनता। इसलिए करदाता द्वारा नोटिस/अतिरिक्त नोटिस/आदेश किस तिथि को खोला गया है, इसकी जॉच पोर्टल के माध्यम से नहीं की जा सकती है।

B. यह कि जीएसटीएन द्वारा दाखिल अनुपूरक प्रतिशपथ पत्र के बिंदु 7 में यह उल्लेख किया गया है कि माननीय उच्च न्यायालय के निर्णय दिनांक 08.10.2025 के क्रम में जीएसटीएन इस तथ्य का परीक्षण करेगा कि क्या पोर्टल पर ऐसा विकल्प बनाया जाना संभव है जिससे यह पता लगाया जा सके कि करदाता द्वारा नोटिस / आदेश/अतिरिक्त नोटिस को कब देखा गया है।

C. यह कि जीएसटीएन द्वारा दाखिल अनुपूरक प्रतिशपथ पत्र बिंदु 8 में यह उल्लेख किया गया

है कि धारा 169 में नोटिस/आदेश की सेवा के सभी तरीकों का विस्तृत प्रावधान है , और विभाग/जीएसटीएन द्वारा इन्हीं प्रावधानों (विशेषकर धारा 169 (1) (c) और (d)) का पालन किया जाता है। जीएसटी प्रणाली को पूरी तरह स्वचालित अप्रत्यक्ष कर व्यवस्था बनाने के उद्देश्य से कानूनी प्रावधानों के अनुसार तैयार किया गया है। किसी भी प्रकार के बदलाव या संशोधन का दूरगामी प्रभाव पूरे जीएसटी प्रणाली की संरचना और कार्य प्रणाली को प्रभावित करेगा।

D. उपरोक्त संदर्भ में माननीय उच्च न्यायालय, इलाहाबाद के निर्देशानुसार जीएसटीएन , नोटिस/अतिरिक्त नोटिस/आदेश हेतु पोर्टल पर "पॉप-अप/व्यू टैब" व्यवस्था विकसित करने पर विचार कर रहा है।

3. यह कि मा० उच्च न्यायालय में लम्बित उक्त वाद के सम्बन्ध में अपर महाधिवक्ता, श्री अनूप त्रिवेदी के साथ आयुक्त, राज्य कर, उ०प्र०, लखनऊ एवं अन्य विभागीय अधिकारियों द्वारा निम्न तिथियों में Zoom Meeting के माध्यम से वीडियों कॉफ्रेंसिंग की गयी, जिसका विवरण निम्न है -

1. दिनांक 02.12.2025 समय 06:30 PM

2. दिनांक 03.12.2025 समय 06:30 PM

3. दिनांक 06.12.2025 समय 01:00 PM

वीडियों कॉफ्रेंसिंग में विचार-विमर्श के बाद राज्य कर विभाग, उ०प्र० के सभी 20 जोनों से प्राप्त सूचना के अनुसार

GSTN के BO-WEB पोर्टल पर वित्तीय वर्ष 2024-25 में सभी प्रकार की कुल 02.82 लाख नोटिसें जारी की गयी हैं।

4. यह कि जीएसटी प्रणाली के अंतर्गत पंजीकृत प्रत्येक करदाता द्वारा GSTN के BO-WEB पोर्टल पर निर्धारित कर अवधि के अनुसार मासिक/त्रैमासिक रिटर्न अनिवार्यतः प्रस्तुत किए जाते हैं, जिनके आधार पर कर जमा (Tax Deposit), इनपुट टैक्स क्रेडिट (ITC) का Claim तथा रिफंड का दावा किया जाता है। न्याय-निर्णयन की कार्यवाही से असंतोष की स्थिति में करदाता विभागीय स्तर पर प्रथम अपील दाखिल कर राहत प्राप्त करते हैं। उपर्युक्त समस्त कार्यवाही करदाता द्वारा विभागीय BO-WEB पोर्टल के माध्यम से ऑनलाइन की जाती है।

ऐसी दशा में जब करदाता द्वारा पोर्टल पर उपलब्ध सभी ऑनलाइन साधनों एवं सुविधाओं का प्रयोग अनिवार्य रूप से किया जाता है, तब विभाग द्वारा नोटिसों/आदेशों की भौतिक तामीली करना न केवल अव्यावहारिक होगा, बल्कि विभागीय एवं विधायी मंशा के भी प्रतिकूल सिद्ध होगा ; क्योंकि ऐसी तामीली से ऑनलाइन-आधारित जीएसटी तंत्र की मूल भावना प्रभावित होगी।

5. यह कि निकट भविष्य में जीएसटी ट्रिब्यूनल के पूर्ण रूप से कार्यशील हो जाने पर करदाता को द्वितीय अपील के स्तर पर एक अतिरिक्त विधिक मंच उपलब्ध हो जाएगा।

अतः मा० उच्च न्यायालय से विनम्रतापूर्वक प्रार्थना है कि नोटिसों व आदेशों की तामीली के सम्बन्ध में किसी भी प्रकार के बदलाव या संशोधन का दूरगामी प्रभाव पूरे जीएसटी प्रणाली की संरचना और कार्य प्रणाली को प्रभावित करेगा। अतः मा० उच्च न्यायालय से निवेदन है कि प्रकरण में कोई प्रतिकूल दृष्टिकोण न अपनाये जाने की कृपा करें।

(डा० नितिन बंसल)

आयुक्त, राज्य कर,
उत्तर प्रदेश,
लखनऊ।"

20. It is relevant - though the State Government of Uttar Pradesh has chosen to adopt that course, a slightly nuanced and more pragmatic approach has been adopted by the central revenue authorities inasmuch as in more than 2000 cases dealt with by us - following **M/s Riya Construction (supra)**, barely a handful would be cases involving central revenue authorities. They may be one in a hundred, or less. On a query put to the learned ASGI (also appearing for the Union of India), as to the possible reason for the same, it has been candidly informed that the central revenue authorities have chosen to serve physical notices of proceedings and copies of orders, in addition to the service through electronic mode. Clearly, the Central Government has realised the difficulties arising from service effected through electronic mode, through the same Common Portal of the GSTN. Therefore, it may have taken a more pragmatic decision to service notices and orders through physical mode, as well.

21. Earlier, pursuant to order dated 08.10.2025, GSTN has filed Supplementary Counter Affidavit wherein it has been stated as below:

> *"4. That the Hon'ble High Court, vide its order dated 08.10.2025, directed the GSTN to file supplementary affidavits in all cases in that batch to make necessary disclosures with respect to point nos. (i), (ii) and (iii) of paragraph no. 7 and 11 of the said order. The relevant paragraph is reproduced below for ready reference:*
>
> > *7. The GSTN may file a short affidavit disclosing:*
> >
> > *(i) the dates on which show-cause notice dated 14.05.2024 and the impugned order dated 22.08.2024 were put up on the Common Portal;*

(ii) if the date on which such notice/order/additional notice may have been opened by the petitioner can be traced out through electronic trail;

(iii) if any alert was sent to the petitioner that the show-cause notice dated 14.05.2024 and the order dated 22.08.2024 had been put up on the Common Portal.

8. The affidavit would also disclose if any mechanism can be devised where once an alert is sent either through e-mail or SMS, another column may be added under the notice/order/additional notice column as may confirm that fact and also if another feature may be added whereby once the notice/order/additional notice put up on the Common Portal has been viewed by the assessee, the portal may thereafter reflect such event i.e. that the document has been "viewed".

9. Let such affidavit be filed within a period of two weeks.

10. Connect and list with Writ Tax No. 2707 of 2025 on 11.11.2025.

11. In view of the order passed today, GSTN may also file supplementary affidavits in all cases in that batch to make necessary disclosure with respect to point nos. (i), (ii) and (iii) of paragraph no. 7 of this order.

5. That with regard to directions issued by the Hon'ble Court so far as the direction contained in para No.7 (i) and 7 (iii) in order dated 08.10.2025, it is stated that any alerts (e-mail/SMS) is triggered in real time/near real time basis to the Primary Authorized Signatory's registered mobile number/e-mail ID upon the same being uploaded on the portal. The details of such alerts have already been provided by GSTN in the counter affidavit submitted by GSTN on 23.09.2025 in the matters which have been tagged along with lead matter (Writ Tax No. 2707 of 2025) and brought to the notice of GSTN.

6. That with regard to the directions contained in para-No.7(ii) above, it is stated that the GST portal does not create a log in respect of the accessing of any communication issued by the Tax Officers, such as a Show Cause Notice, Order etc., by a taxpayer. Hence, electronic trail of the date on which such notice/order/additional notice may have been opened by the petitioner can't be traced.

7. That with respect to the direction contained in para-No.8 of the Hon'ble High Court's order dated 08.10.2025, it is most respectfully submitted that GSTN shall examine the feasibility of

introducing such features/mechanism on GST portal. However, it is respectfully submitted that the Section 169 of the GST Act provides for various modes of Service of Notices/Orders etc.

8. That it is most respectfully submitted that the aforesaid provision contained under Section 169 of CGST Act 2017 exhaustively prescribed inter-alia the method of service of notice/order which has been complied (more specifically sub-clause (c) and (d) under subsection 1 of Section 169 of the Act) with by the Deptt./GSTN.

9. That it is most respectfully submitted that GST system has been designed as per the provision stipulated under the CGST Act and Rules thereunder with the objective of establishing a fully automated indirect tax regime in the country. Any deviation or modification thereto may have a cascading impact, potentially destabilizing the structural and functional integrity of the GST system.

22. Another circumstance that we may notice before we proceed further is - the State of Uttar Pradesh remains the most populous State of the country and at present one that may not be at the forefront of use of internet and digital technology, experienced in certain other parts of the country. Traders big or small, live in this diversely large State, not in homogeneous circumstances but in circumstances that vary practically every 100 kms. Besides a huge divide that otherwise exists between city dwellers and villagers, we are also mindful, though electricity may have become commonly available at the same time easy availability of internet services and use of digital technologies in day to day communications in business activities (besides online payments enabled through QR coding), ease use of electronic devices, may not be prevalent among all. Contextually, such people and the broader class to which they may be traced, have existed from before the introduction of the GST regime. The legislative background noted above, led to formation of behavioral patterns, habits formed and practices developed - enabling ease of

communication with the revenue authorities, through physical mode, in absence of electronic mode.

23. Though it cannot be denied that in future, the mode of communication may move to and be more convenient to all users, through electronic platforms only, at the same time that fast sharp (reformative) turn made by the State revenue authorities occasioned solely upon enforcement of the GST regime, may have left a large section of the assessees bemused and disbalanced, quite like a carriage being pulled by a galloping horse, over a sharp bend. They may have been caught off–guard/ill-prepared and thus forced to falter, for that reason as well.

24. Also, it is integral to any tax administration that all compliances required by the law may not be made directly by the tax payer or the assessee but through an intermediary i.e. a tax professional engaged for the purpose of filing his monthly or annual return or to reply to notices or for any other communication with the revenue authorities that may become necessary or be required. It is common for an assessee to change such consultants/professionals and employees, requiring further changes to be made to the details furnished to the revenue authorities, for making electronic communications.

25. Further, it is also an admitted position of fact, currently the Common Portal run by the GSTN knows only the foreign language i.e. English. It does not interact with the taxpayer who it seeks to serve, in his native language-Hindi. Again, we may take note - Hindi remains the language of the people of the State, besides being its official language. All communications issued by the State Government are in Hindi, including the Show Cause Notices and Adjudication Orders, in issue here. It is not only the official status of the language

Hindi, but it is the underlying logic/rationale behind that status, that is relevant. Hindi is the language of the masses including the literate and the illiterate, in the State. However, apparently for technical reasons and not by way of design, the GSTN has only been able to work its Common Portal, in English, a language with which 10-15% of the population may be conversant, by some estimates. Clearly, it is a language known to tax professionals but the same is not true of all trade and business people, who the GSTN seeks to serve.

26. Therefore, there exists an underlying assumption on part of the GSTN and the revenue authorities that the large body of taxpayers may be able to work the Common Portal, if not by self, then through the professionals they may hire. If they were to work it themselves, they will first have to navigate through various tabs and options provided only in English and then be able to reach the notice or order written in Hindi. Perhaps for that reason as well, the Central revenue authorities have adopted the mechanism to serve notices and orders, through physical/offline mode, as well.

27. Yet, the Court has been informed by the GSTN- neither it has any electronic trail nor mechanism to generate report of the date and time when any order made available on the Common Portal may have been retrieved or opened or downloaded or viewed by the addressee/tax payer/registered person, nor there exists any mechanism to ascertain the date and time when any email communication or SMS alert may have been seen by the recipient. Also, there is no statutory obligation on the registered person/taxpayer to either open and work on the portal, every day.

28. Next, we may note the provisions. Section 107 (1), (4) and (11) of the State/Central Act read as below:

*"**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, 2017 (12 of 2017) 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.*

(2) .....

(3) .....

*(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**.*

(5) .....

(6) .....

(7) .....

(8) .....

(9) .....

(10) .....

*(11) **The Appellate Authority** shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall **not refer the case back to the adjudicating authority that passed the said decision or order** :*

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is

given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74."

(emphasis supplied)

29. Then, Section 161 of the State/Central Act reads as below:

*"**Section 161. Rectification of errors apparent on the face of record**.- Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, **any authority**, who has passed or issued any decision or order or notice or certificate or any other document, **may rectify any error** which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the Central Goods and Services Tax Act, 2017 (12 of 2017) or by the affected person **within a period of three months** from the date of issue of such decision or order or notice or certificate or any other document, as the case may be :*

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document :

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission :

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."

(emphasis supplied)

30. Also, Section 169 of the State/Central Act reads as below:

*"**Section 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 :*

*(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*

*(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."

(emphasis supplied)

31. Then, Rule 142 (1), (1A) and (2) of the Rules framed in the State/ Central Act reads as below:

*"**142. Notice and order for demand of amounts payable under the Act.** - (1) The proper officer **shall serve, alongwith** the -*

*(a) **Notice** issued under Section 52 or Section 73 or Section 74 or Section 76 or Section 122 or Section 123 or Section 124 or Section 125 or Section 127 or Section 129 or Section 130, **a summary thereof electronically** in **FORM G.S.T. D.R.C.-01**.*

*(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM G.S.T. D.R.C.-02**, specifying therein the details of the amount payable.*

*(1A) The proper officer may, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, communicate the details of any tax, interest and penalty as ascertained by the said officer, in **Part A** of **FORM G.S.T. D.R.C.-01A**.*

*(2) Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of Section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of Section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the act [whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A)] he shall inform the proper officer of such payment in **FORM G.S.T. D.R.C.-03** and an acknowledgement, accepting the payment made by the said person in **FORM G.S.T. D.R.C.-04**."*

32. Further, Section 4, 12 and 13 of the Information Technology Act, 2000, reads as below:

*"**4. Legal recognition of electronic records.**—**Where any law provides that information or any other matter shall be in writing** or in the typewritten or printed form, then, notwithstanding anything contained in such law, **such requirement shall be deemed to have been satisfied if such information** or matter is–*

*(a) **rendered** or made available **in an electronic form**; and*

(b) accessible so as to be usable for a subsequent reference.

12. Acknowledgment of receipt.—*(1) Where the originator has not 3[stipulated] that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by—*

(a) any communication by the addressee, automated or otherwise; or

(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall he deemed to have been never sent by the originator.

(3) Where the originator ***has not*** *stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time,* ***then the originator may give notice*** *to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.*

13. Time and place of dispatch and receipt of electronic record.—*(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.*

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

(i) receipt occurs at the time when the electronic record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated

computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section,–

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "usual place of residence", in relation to a body corporate, means the place where it is registered."

(emphasis supplied)

33. Also, in that context, the words - 'computer', 'computer network', 'computer resource', 'computer system', 'electronic form', 'electronic record', 'originator' as defined under IT Act read as below:

"(i) "computer" means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network;

(j) "computer network" means the inter-connection of one or more computers or computer systems or communication device through–

> *(i) the use of satellite, microwave, terrestrial line, wire, wireless or other communication media; and*
>
> *(ii) terminals or a complex consisting of two or more interconnected computers or communication device whether or not the inter-connection is continuously maintained;*
>
> *(k) "computer resource" means computer, computer system, computer network, data, computer data base or software;*
>
> *(l) "computer system" means a device or collection of devices, including input and output support devices and excluding calculators which are not programmable and capable of being used in conjunction with external files, which contain computer programmes, electronic instructions, input data and output data, that performs logic, arithmetic, data storage and retrieval, communication control and other functions;*
>
> *(r) "electronic form" with reference to information, means any information generated, sent, received or stored in media, magnetic, optical, computer memory, micro film, computer generated micro fiche or similar device;*
>
> *(t) "electronic record" means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche;*
>
> *(za) "originator" means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary."*

34. In this background, learned counsel for the respective parties have advanced submissions. First, Shri Pranjal Shukla, learned counsel for some of the petitioners submitted, upon reading Section 169 of the State/Central Act in entirety, 'deemed service' may arise or be construed only with reference to service effected through 'tendering' or 'publication' or 'affixation' (under sub-section 2), or upon dispatch of registered post or speed post (under sub-section 3), of Section 169 of the State/Central Act. Service through 'tender' and 'registered post' or 'speed post' are contemplated under Section 169(1)(a) and (b) of

the State/Central Act, while service through 'publication' is contemplated under Section 169(1)(e) of the State/Central Act and service through 'affixation' is contemplated under Section 169(1)(f) of the State/Central Act. Constructive service may arise only with reference to Clauses (a), (b), (e) and (f) of Section 169(1) of the State/Central Act. Further, to the extent no deeming fiction of law has been created to Clauses (c) and (d) of Section 169(1) of the State/Central Act, no conclusion of constructive service may ever arise, by uploading the show cause notice or the order on the Common Portal of the GSTN, or by sending the communication (about such notice or order), through email. He has relied on the decision the Supreme Court in **Satendra Kumar Antil vs Central Bureau of Investigation & Anr.; 2025 SCC OnLine SC 1578**.

35. Second, it has been submitted, for an appeal to be preferred by a person against the adjudication order, such order must be effectively 'communicated' to the affected person, before limitation may start running, under Section 107 of the State/Central Act. For 'communication' of any order that may be appealed against, it's 'service' on the affected person is a *sine qua non*. To the extent the word 'communicated' has not been defined under the State/Central Act and to the extent only modes of service have been provided under Section 169 of the State/Central Act, unless actual or deemed/constructive service of the show cause notice and/or order exists, neither the noticee may comply with such a notice nor the aggrieved person may comply with or file appeal against the adjudication order.

36. Learned counsel for the petitioner would further submit, uploading an order or notice on the Common Portal, is not the same as 'service'

contemplated under Section 169 of the State/Central Act. Read in conjunction with Section 13(1) and (2) of the Information Technology Act, 2000, the Common Portal remains a ‘computer resource’ of the GSTN, but not the petitioners. He further denies existence of any contract between the GSTN, and the petitioners as may allow for an interpretation to arise, that uploading of a notice and order on the Common Portal amounts to ‘deemed service’ of the notice or order, on the petitioner.

37. Ms. Pooja Talwar, learned counsel, has largely adopted the submissions advanced by Mr. Pranjal Shukla. Further, it is her submission, no satisfaction has been recorded in the adjudication order as to the mode of service of the Show Cause Notice. Neither such mode has been specified nor disclosed in order.

38. Next, she would submit Clauses (a), (b), (c), (d), (e) and (f) of the sub-section (1) of Section 169 of the State/Central Act are alternative modes of service. The mode later specified may be adopted only if the mode earlier provided, is not ‘practicable’. Therefore, it never became open to the revenue authorities to adopt the modes of service prescribed under Clauses (c) and (d) of Section 169(1) of the Act, without making any effort to serve the Show Cause Notices and the orders on the noticee/assessee, through the modes prescribed under Clauses (a) and (b) of the sub-section (1) of Section 169 of the State/Central Act.

39. Relying on **TVL Sri Mathuru Eswarar Traders vs The Deputy State Tax Officer-I, Poolankinar Thiruppur** passed in **W.P. No. 16787 of 2025** and **Mr. Sahulhameed vs The Commercial Tax Officer** passed in **W.P. (MD) No. 26481 of 2024**, both decisions of the Madras High Court, it has been submitted - in similar

circumstances physical mode of service should have been adopted first. Only if the same was not available or possible, the alternative mode (placed lower in hierarchy of choices created under Section 169(1) of State/Central Act), may have been adopted. Referring to **M/s Kashi Bartan Bhandar vs State of U.P. & 2 Ors.; 2019 NTN (69) 111**, it has been further submitted that a co-ordinate bench has already recognized service through a lower placed mode may be adopted, only if none of the higher placed modes are ‘practicable’.

40. With respect to applicability of the Information Technology Act, her submissions are at variance to the submissions advanced by Sri Pranjal Shukla. She would submit, the State/Central Acts being special laws and complete Code in themselves, there is no room to apply the general principles of the Information Technology Act.

41. The other counsel appearing for individual petitioners have adopted the submissions advanced by Sri Pranjal Shukla and Ms. Pooja Talwar. Thereafter, Sri Vishwaraj Singh, another learned counsel, besides adopting submissions noted above, has stressed that the words 'making it available' on the Common Portal used in sub-Clause (d) of sub-Section 1 of Section 169 of the State/Central Act are wider and contemplate more than uploading on the Common Portal. The legislature has deliberately not used the word ‘upload’ and its derivatives but the phrase 'making it available'. Thereby the legislative intent has been clearly expressed - that the document or communication should be readily/easily/conveniently available to the noticee/assessee/addressee. If the document sought to be served is hidden on the portal as may require expert knowledge or skillful handling of the Common Portal, necessarily involving more than elementary knowledge of the working of computers and websites, it

may not be readily inferred that by merely uploading the document on the Common Portal, the same had been made available to the addressee/noticee/assessee.

42. Further, the memorandum of issue of GSTN enlists its main objective as:

> *"1. To promote trade and commerce by providing easily accessible, quick and efficient information technology and communications related services to the public and Government.*
>
> *2. To assist and engage with various stakeholders in preparing information technology and communications related infrastructure for smooth roll out of any information technology driven initiatives and other e-governance initiatives of the Government or any department or agency of the Government, specifically for the roll out of the GST."*

43. GSTN has not yet fulfilled that objective of its incorporation. It only seeks to serve the revenue's interest, by displaying such tabs and notices as are dictated to it for revenue considerations. By way of example, he has relied on screenshots of the dashboard of an assessee. Clearly on the first screen itself a tab appears, containing additional/immediate notification regarding authentication of Aadhar. He has relied on other pages of the dashboard to disclose that the revenue has prioritized entries of the Electronic Credit Ledger as also status of the returns filed for the last five return period, depicted in different colors indicating whether such return has been filed, or is overdue, or has not been filed. Therefore, it is not difficult for GSTN to provide for similar easy access to all notices/orders etc. uploaded, for the purpose of service on an assessee – to make compliance, by making similar tabs/options. Unless similar measures are devised and adopted, not only the object of the GSTN may remain unfulfilled, but

service of notices and/or orders may not be found complete, on mere uploading of such documents.

44. We have also heard Sri Praveen Kumar as *Amicus Curiae,* on the issue. He would submit, no doubt, concept of deemed service exists in tax laws (State/Central). However, a question arises - to the interpretation to be given to the law and the circumstance when such deemed service may be permitted as a fact and the consequence that may arise, therefrom. First, a deeming fiction in law is created by the legislature for a specific purpose. The Court may give full effect to it after ascertaining existence of circumstances wherein such deeming fiction may arise. By way of necessary corollary - the applicability of the deeming fiction and that effect caused in law may not arise in circumstances beyond those contemplated by the legislature, itself.

45. Plainly, the legislature contemplated a deeming fiction of law providing deemed service/constructive service, in circumstances covered under Clauses (a), (b), (e) and (f) of Section 169 (1) of the State/Central Act only, through sub-Section 2 and 3 of Section 169. That effect in law may not be avoided. At the same time, that effect may never arise with respect to the other modes of service described under Section 169(1)(c) and (d). There is no provision of law to allow for such a consequence or interpretation of the law. Reliance has been placed on the decision of the Supreme Court in **State of West Bengal vs Sadan K. Bormal & Anr.; (2004) 6 SCC 59**.

46. Second, he has stressed the meaning to be given to the word 'communicate' used in Section 107 of the State/Central Act. According to him both for the purposes of compliance of an adjudication notice or order and for the purpose of challenge thereto, the notice/order must be ‘communicated’ (as a fact) to the noticee/assessee. Though

for the purpose of effective communication channels/modes of service have been created by the legislature under Section 169 of the State/Central Act allowing for electronic mode, unless service of notice or order is made with the object and purpose of adequate communication to the noticee/assessee, service would remain incomplete and purposeless. Unless the vital stake holder in the tax regime, that the noticee/assessee is, is served such notice and order - effectively communicating the same to him, the intent/purpose of that service of notice or decision of the adjudicating authority or statutory authority under the State/Central Act, may remain unfulfilled and any service that may be claimed by the revenue authorities, would remain an empty/idle formality.

47. Therefore, the word 'communicated' used in Section 107 of the State/Central Act, refers to knowledge of the contents of the dispatch made, while deemed service leads to presumption of receipt of a dispatch made, only. Examined in that light, if by any stretch of imagination, uploading of notice/order on the Common Portal is ‘receipt’, it would fall short of actual/constructive ‘communication’ of the contents of such notice or order, as may impart knowledge to the noticee/assessee of its purpose.

48. In absence of any verifiable measures provided by the GSTN to ascertain if such notice/order (as may have been sent through electronic mail or uploaded on the Common Portal) had been viewed or retrieved and thus seen by the noticee/assessee, the exercise of service through electronic modes may therefore remain incomplete.

49. Relying on **Harikisan vs State of Maharashtra & Ors.; AIR 1962 SC 911**, he would submit, though the ratio of that decision of the Supreme Court arose in the context of liberty jurisdiction, at the same

time, it is relevant to note that the Supreme Court has reasoned – for the detenue to have opportunity to represent, physical delivery is necessary. Communication in that context was interpreted to mean imparting sufficient knowledge of all the grounds on which the order of detention may be based. Applying that principle, he would contend, unless the contents of the notice/order are delivered or disclosed to the noticee/assessee, any receipt or service claimed may never satisfy the test of the document being “communicated”. To summarise, he would submit, all communications made may include service but all service may not amount to communication.

50. Further, it has been submitted that the Common Portal was contemplated by legislature and is governed by the provision of Section 146 of the State/Central Act. Primarily, it is for the purpose of providing registration, payment of tax, filing of returns, computation and settlement of tax, issuance of e-way bills but not for issuance of show-cause notice and service or orders. To that extent, in his submission no notification has been issued by the State Government.

51. Responding to the above submissions, Sri Anoop Trivedi, learned Additional Advocate General, has relied on the provisions of the Information Technology Act, besides referring to Section 169 of the State/Central Act. He has heavily relied on the provisions of Section 2(r)(d) and Section 13 and 14 of the Information Technology Act. According to him, any information generated/sent/received or stored in any electronic record would lead to a dispatch of and its receipt in accordance with Section 13 of the State/Central Act, the moment such electronic record enters the computer resource outside the control of the originator, here, the adjudicating authority. To the extent, the show-cause notice and/or orders were uploaded by the Adjudicating

authority on the Common Portal which is a computer resource outside the control of the State/revenue authorities, due dispatch is established.

52. Second, referring to the forms filled up by the assessee while seeking registration under the State/Central Act, it has been stated that an agreement exists between the revenue authorities and GSTN. Also, they have duly disclosed the e-mail ID as also from other details used to authenticate and limit the access to the user dashboard by the registered person, to the exclusion of all others. Relying on Section 2(k) of the Information Technology Act, it has been submitted, receipt of dispatch arises on the uploading of the show-cause notice or the order on the Common Portal. To the extent e-mail be sent to an individual and not to the Common Portal, its receipt may arise as soon as it is retrieved.

53. Relying on **M/S Axiom Gen Nxt India Pvt. Ltd. vs Commercial State Tax Officer**, a decision of the learned single judge of Madras High Court in **W.P. No. 1114 of 2025**, it has been stressed, uploading a document on the Common Portal is equivalent to publication. Therefore, in any case, the consequence of deemed service/constructive service would arise as soon as show-cause notice or the order is uploaded on the Common Portal. Because of lack of time lag between uploading of a document on the Common Portal and it becoming visible to the addressee, that service is instant.

54. Next, reference has been made to Rule 142 of the Rules framed under the State and the Central Act to submit, it is wholly permissible in the scheme of the GST laws to communicate to the noticee/assessee the notices and orders by sending alerts through electronic mode. Referring to the other affidavit filed by the GSTN, it has been

submitted, such e-mail communications were dispatched. Additionally, SMS alerts were also sent to the noticee/assessee on their designated mobile phone number. Therefore, the service of notice and order is wholly complete.

55. To buttress his submission, the learned Additional Advocate General has relied on two decisions of two co-ordinate benches of this Court, first in the case of **Atlantis Intelligence Ltd. vs Union of India; [2025] 177 taxmann.com 522 (Allahabad)** and the other in **D.R. Hotels (P.) Ltd. vs Deputy Commissioner; [2025] 179 taxmann.com 551 (Allahabad)**. According to him in **Atlantis Intelligence Ltd. (supra)**, the co-ordinate bench has taken a categorical view that service of an order by electronic mail is valid service and the date on which such dispatch is made would count as the date for the purpose of start of limitation to file appeal u/s 107 of the State/Central Act. Also, according to him in **D.R. Hotels (P.) Ltd. (supra)** merely because an asseesee/noticee may have assigned usage of his user ID on the Common Portal, to his employee or such person who may or may not have communicated (to the assessee), due information (in real time), may make no difference to the extent that service made through electronic mode is valid service, as may admit of no doubt.

56. Further, reliance has been placed on the decision of the Delhi High Court in **M/S Mathur Polymers vs Union of India; 2025:DHC:7435-DB**, the issues being raised before this Court are described to have been answered in favour of the revenue and against the assessees, by the Delhi High Court by relying on its earlier decision in **Rishi Enterprises vs Additional Commissioner, Central Tax Delhi; 2025:DHC:7353-DB**. To that extent, it has been submitted

that uploaded notice or order on the Common Portal would invite inference of deemed service of such notice/order on the addressee. He has also relied on **State of Punjab vs Khemi Ram, (1969) 3 SCC 28; Kumar Jagdish Chand Sinha vs CIT [1996] 86 Taxman 122 (SC); Madan Lal vs State of UP; (1975) 2 SCC 779; Assistant Transport Commissioner Lucknow & Ors. vs Nand Singh; (1979) 4 SCC 19**.

57. Having heard learned counsel for the parties and having perused the record, first, the fact aspects may be noted. Undeniably, the petitioners before the Court in this batch and the other petitioners who have been dealt with in terms of the earlier orders in **M/s Riya Construction (supra)**, are primarily small to medium sized businesses. Within that, the petitioners are traders and manufacturers of goods. Prior to the enforcement of the GST laws, they were governed by the provisions of the U.P. Trade Tax Act, 1948 as was superseded by the U.P. Value Added Tax Act, 2008, and the Central Sales Tax Act, 1956. As has been noted above, the behavioural pattern of such assessees came to be defined and governed (up to the enactment of the GST laws), by the legislative measures contained in the above-named Acts. Practices had developed and were widely prevalent in the entire State where under it was a norm that any notice or order issued by the assessing authority or any revenue authority, either under the U.P. Trade Tax Act, 1948 or the U.P. Value Added Tax Act, 2008, was served through physical mode, only.

58. That practice has been suddenly abandoned with effect from 1.7.2017 upon enforcement of the GST Act. While statutory authorities faced some difficulty in migrating to new procedures now adopted, leading to complaints made to GSTN, the assessee/taxpayers were certainly not involved in that decision making - migrate from

offline mode to online mode. They claim genuine hardship. That cannot be brushed aside, lightly. That thought, amongst others has persuaded us to take the view we have taken in **M/s Riya Construction (supra)**, amongst others for reasons noted next:

59. Second, it is equally true, under the old regime of taxation laws that existed up to 30.6.2017, power existed under Section 30 of the U.P. Trade Tax Act, 1948 and Section 32 of the U.P. Value Added Tax Act, 2008, with the original authority, to recall its *ex parte* order, subject to satisfaction that the assessee had not been served with the notice preceding the order or that he could not appear on the date fixed, for sufficient cause. That led to the formation of the second behavioral norm or practice that pre-existed the enforcement of the GST laws, wherein persons such as the petitioners had an opportunity to avail a remedy to seek recall the *ex parte* order, if no notice had been served. That remedy is no longer available under the State/Central Acts.

60. Third, if such *ex parte* or other adverse orders existed, the appeal authorities had power to set aside such orders and remit the proceedings to the original authority. It also led to a practice/norm. Assessee who may not have been fully/properly heard by the Assessing Authorities, could go back to them, for full, effective redressal of their grievances. That power of the appeal authorities has been taken away under the State/Central Acts.

61. Fourth, the normal period of limitation to file appeal though prescribed, similarly, in view of the applicability of Section 5 of the Limitation Act, delay in filing appeals could be explained under the old regime, beyond the minimal period of 30 days. However, upon enforcement of the GST laws, that discretion has been taken away

from the appeal authorities. At present, they can only condone delays up to 30 days. That too requires a behavioral change with the assessee, to understand that delay in filing appeal may not be condoned, beyond 30 days. Thus, the general power of the appeal authority to condone delays, has been conditioned and limited, to 30 days only.

62. Those difficulties arising from doing away with pre-existing norms and practices may not govern the outcome of this batch of writ petitions. However, it does indicate, the extent to which breach of rules of natural justice both with respect to service of notice, to enable filing of replies and service or orders, to enable filing of appeals, is being claimed. It therefore commends to us to examine the issue raised and the submissions advanced, with that much more sensitivity, and care.

63. Coming to the submissions advanced, it cannot be denied, the GST laws are progressive, to the extent they provide service of notices, furnishing of replies and service of orders, through electronic mode, also. The world that exists today and the trajectory of development that it appears to follow, commends us - such legislative steps are progressive, to the extent they seek to achieve an objective of ease of communication between the revenue authorities and the assessees/taxpayers. At the same time, as has been fairly admitted by all sides, service through electronic mode is not the only mode prescribed under the Act. The caveat being, the laudable objective may be realised, only after the major stakeholder/taxpayers are completely on board with the new mechanism.

64. On legalities, we are unable to accept the submissions advanced by some of the learned counsel for the parties that modes of service prescribed under Section 169 (1) of the State/Central Act, namely

under Clauses (a), (b), (c), (d), (e) and (f) are in that order of hierarchy of preference. Suffice to note, the mode of service through affixation is the last mode where the legislature has clearly provided that it must be resorted to by way of last measure when none of the five other modes prescribed under Section 169 (1) of the State/Central Act is 'practicable'. Decision of a coordinate bench in **M/S Kashi Bartan Bhandar (supra)** is therefore applicable only for the purpose of Section 169 (1)(f) of the State/Central Act. That reasoning is not available in favour of the petitioners insofar as Clauses (a) to (e) of sub-section (1) of Section 169 of the State/Central Act.

65. Though it may be accepted (as submitted by learned Additional Advocate General), that these are in the alternative [except as to (f)], to be adopted on the choice vested with the revenue authorities - to choose any mode, at present, that choice made by revenue authorities is divided. While the Central revenue authorities have chosen to move on to electronic mode, without abandoning service through offline mode, the State revenue authorities have charted a different course by abandoning service through physical mode, completely, except where registration itself may have been cancelled. Thus, the revenue authorities (Central and the State) are divided in their opinion - as to the most desirable mode of service of notice and the orders on the assessees/taxpayers. Certainly, on the face of it, appreciation made by the Central revenue authorities appears to lean in favour of the contentions advanced by the learned counsel for the petitioners, that at present, service through electronic mode (only), may not be most desirable decision. Yet, that divergence of policy may also not lead to the conclusion to be drawn to the legalities of the issue. However, we do recognize - that policy divergence is indicative of the ground realities in which the same/similar taxation laws of the State/Central

Acts are being implemented, By two different governments, one State and the other Central.

66. Looking at Section 169 of the State/Central Act, it first prescribes six modes of service under sub-section (1) of that Act. In the second part through sub-sections (2) and (3), it creates a legal fiction of deemed service in certain circumstances. To decide the issue canvassed before us, it is crucial to examine if that fiction of law applies to Clauses (c) and (d) of sub-section (1) of Section 169 of the State/Central Act. There is no denial that the legislature may create a deeming fiction including as to constructive service. However, as to the true rule of interpretation to be applied to determine the applicability of such a clause, two tests are undeniable. First, the deeming fiction in law must be given full effect for the purpose for which it is created. Second, once that has been done, no further inference may be drawn to extend it's enforcement or applicability to other circumstances, not contemplated by legislature.

67. Here, as noted above, there are six modes of service created by legislature. Thus, it was aware of that fact, yet, it has thereafter chosen to provide for deeming fiction/constructive service against four modes of service, only. As noted above, the six modes of service/circumstances provided under Section 169(1) of the State/Central Act are:

(i) tendering directly or by messenger;

(ii) dispatch by speed post, etc. with acknowledgement due;

(iii) sending communication by email;

(iv) by making available on the common portal;

(v) by publication in a newspaper and;

(vi) by affixation.

68. Sub-sections (2) and (3) of Section 169 of the State/Central Acts create that deeming fiction and cause the effect of deemed service, not generally but specifically with respect to notices, orders etc., that may have been ‘tendered’ or ‘published’ or ‘affixed’. That service may be deemed to arise on the date such ‘tender’, ‘publication’ or ‘affixation’, is completed. In the second part, under sub-section (3), another deeming fiction arises with respect to dispatch made by speed post [but not through courier mentioned in sub-clause (b)]. That may arise not on the date of dispatch made but on expiry of normal period required for transmission of such communication from the sender, i.e. revenue authorities, to the noticee/taxpayers, by speed post, that too with acknowledgement due.

69. While providing for two separate sub-sections creating such specific deeming fiction, the legislature has been careful not to include either dispatch by ‘courier’ [under sub-clause (b)] or sending communication by email or by making it available on the common portal. That deliberate omission on part of the legislature is a conscious act of wisdom which is not open to contest in these proceedings.

70. Suffice to note, the clear legislative intent that emerges on the co-joint reading of the Section 169(1), (2) and (3) is - in the first place, six modes of service have been prescribed, of which five are in the alternate i.e. at the discretion of the revenue authorities, while the sixth may be adopted only if none of the other/first five is ‘practicable’. Second, the effect of deemed service may arise only with respect to modes of service (a), (b) only to the extent it alludes to dispatch made by speed post but not through courier and (e) upon

publication in newspaper but no other publication and; (f) by affixation, if that mode be adopted, in accordance with law.

71. In **Sadan K. Bormal (supra)**, the principle governing the provision creating the fiction in law, was examined by the Supreme Court, and it was unequivocally laid down as below:

> *"So far as interpretation of a provision creating a legal fiction is concerned, it is trite that the court must ascertain the purpose for which the fiction is created and having done so must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. In construing a fiction it must not be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. It cannot be extended by importing another fiction. These principles are well settled and it is not necessary for us to refer to the authorities on this subject. The principle has been succinctly stated by Lord Asquith in East End Dwellings Co. Ltd. v. Finsbury Borough Council, when he observed:*
>
> *If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs. It does not say that, having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

72. That authority itself is enough to make it clear that the purpose and object of a deeming fiction clause must be understood in the context of the legislative language itself and not on any other appraisal to be made, by Courts.

73. Second, (in absence of constructive service arising under Section 169 of the State/Central Act), as to actual service through modes created under section 169(1)(c) and (d) of the State/Central Acts, it is material to note that the stand of the revenue authorities and GSTN is,

at present they do not have the means or access on the Common Portal etc., as may enable them to ascertain the date or time when any notice or order may have been actually retrieved or downloaded or opened or its contents viewed or seen by the noticee or the taxpayer, to whom such communication may have been addressed, either through e-mail or through the Common Portal. Therefore, at present, the date and time when such order may have been received by the noticee/taxpayer may remain unknown to the revenue authorities. Therefore, we had queried GSTN to give its response thereto. It has been noted above.

74. Though (as noted above), it has been informed that e-mail communications were dispatched at the designated e-mail address of individual assesses and notices and orders were uploaded on the Common Portal, the GSTN and the revenue authorities do not have the means (at present) to ascertain the time when that electronic document/record may have been accessed or retrieved or downloaded or viewed or opened by the noticee/taxpayer, either on the Common Portal or the e-mail address of the assessee. While a general assurance has been offered for such a measure to be developed later, neither such measures exist nor GSTN has made any commitment when such measures may be made available.

75. Therefore, on the factual aspect of the issue, we have no hesitation in inferring the date and time of service of any matter uploaded on the Common Portal or dispatched through e-mail, is not known to the revenue authorities or GSTN. In many cases the taxpayer feels aggrieved by the *ex parte* nature of the orders passed. While no submission may be entertained as to the absence of powers to recall *ex parte* orders and while there is no challenge to any provision of law curtailing the powers of the appeal authority to remit/remand to any

Adjudicating Authority, it is therefore most crucial that a limited opportunity of appeal made available to the assessee/tax-payer under Section 107 of the Act, be kept intact and real.

76. Thus, besides absence of factual or constructive service, the period of limitation has been prescribed as three months with delay condonable only for a month from the date of the order being ‘communicated’. The legislature has consciously not used the word 'served’ or ‘received’ in Section 107 of the State/Central Act. Rather, it has used the word ‘communicated’. That may inhere in it knowledge of all facts contained in the notice or order thus ‘communicated’. The words 'communication' and 'service' ‘received’ have been denied in the Black's Law Dictionary and Stroud's Judicial Dictionary of Words and Phrases as below:

Black’s Law Dictionary, South Asian Edition, Eighth Edition

> *"**1. Communication**: 1. The expression or exchange of information by speech, writing, gestures, or conduct; the process of bringing an idea to another's perception. 2. The information so expressed or exchanged.*
>
> ***2. Service**: 1. The formal delivery of a writ, summons, or other legal process <after three attempts, service still had not been accomplished>. -Also termed service of process. [Cases: Federal Civil Procedure 411-518; Process 48-150. C.J.S Process 26-91]. 2. The formal delivery of some other legal notice, such as a pleading <be sure that a certificate of service is attached to the motion>. [Cases: Federal Civil Procedure 665].*
>
> *constructive service. 1. See substituted service. 2. Service accomplished by a method or circumstance that does not give actual notice.*
>
> ***3. Received:** adj. 1 Capable of being admitted or accepted <receivable evidence>. 2. Awaiting receipt of payment accounts receivable>. 3. Subject to a call for payment <a note receivable>.*

Stroud’s Judicial Dictionary, Eighth Edition

> ***1. Communication:*** *"Electronic Communication". For discussion of the nature of an electronic communication, see R vs Effik [1994] 3 All E.R. 458, HL and Morgans v Director of Public Prosecution [2000] 2 All E.R. 522, HL. See also Stat. Def., s.15(1) of the Electronic Communication Act 2000(c.7) (includes a communication comprising sounds or images or both and a communication effecting a payment")*
>
> ***2. Served:*** *A person is not "served" with proceedings for the purposes of Council Regulation (EC) 44/2001 art.34(2) merely by way of being notified but not in accordance with the relevant regulations [Tavoulareas v Tsavliris (2006) EWCA Civ 1772].*
>
> ***3. Received:*** *Sums "received" in the United Kingdom in respect of securities elsewhere and chargeable with income tax under s.100 Sch. D Case 4 of the Income Tax Act 1842 (c.35) did not include sums only constructively received in Great Britain, in yearly accounts of profits and loss (Gresham Life Assurance v Bishop [1902] A.C. 287, weakening effect of, if not over-ruling, Universal Life Assurance v Bishop, 68 L.J.Q.B. 962; following Scottish Mortgage Co of New Mexico v Mc Kelvie, 24 S.L.R. 87, and Norwich Union Fire Insurance v Magee, 44 W.R. 384). See further Forbes v Scottish Provident Institution, 33 S.L.R. 228. Sums actually received in the United Kingdom in respect of a business abroad were, prima facie, profits chargeable with income tax (Scottish Provident Institution v Allan [1903] A.C. 129; The Same v Farmer, 6 Tax Cas. 34).*

77. In **Raja Harish Chandra Raj Singh vs Deputy Land Acquisition Officer & Anr.; 1961 SCC OnLine SC 140**, an issue arose if the limitation to seek a reference would commence from the date of the award as marked by the authority framing such an award, or the date of its communication to the person concerned. The High Court had taken a view construing the language of section of the Land Acquisition Act, literally - as the date marked in the award. In that context, the Supreme Court observed as below:

> *"**6.** There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision*

> *ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement, an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way."*

78. Then, in **CCE vs M.M. Rubber and Co., 1992 Supp (1) SCC 471** , the Supreme Court had the occasion to directly consider, the date of 'communication' of an order on the affected person, as may give rise to the start point of running of limitation and if it could be different from the date on which such order may have been signed and put beyond the control of the issuing authority, as may give rise to 'communication', in the first sense. It was thus observed:

> *"9. The words "from the date of decision or order" used with reference to the limitation for filing an appeal or revision under certain statutory provisions had come up for consideration in a number of cases. We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal*

or revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.

10. Under Section 25 of the Madras Boundary Act, 1860 the starting point of limitation for appeal by way of suit allowed by that section was the passing of the Survey Officer's decision and in two of the earliest cases, namely, Annamalai Chetti v. Col. J.G. Cloete [ILR (1883) 6 Mad 189] and Seshama v. Sankara [ILR (1889) 12 Mad 1] it was held that the decision was passed when it was communicated to the parties. In Secretary of State for India in Council v. Gopisetti Narayanaswami Naidu Garu [ILR (1910) 34 Mad 151 : (1911) 1 MWN 28 : 8 MLT 310] construing a similar provision in the Survey and Boundary Act, 1897 the same High Court held that a decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances the parties affected by it have a reasonable opportunity of knowing what it contains. "Till then though it may be written out, signed and dated, it is nothing but a decision which the officer intends to pass. It is not passed so long it is open to him to tear off what he has written and write something else." In Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer [(1962) 1 SCR 676 : AIR 1961 SC 1500] construing the proviso to Section 18 of the Land Acquisition Act which prescribed for applications seeking reference to the court, a time-limit of six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever first expires, this Court held that the six months period will have to be calculated from the date of communication of the award. In Asstt. Transport Commissioner, Lucknow v. Nand Singh [(1979) 4 SCC 19 : (1980) 1 SCR 131] construing the provision of Section 15 of the U.P. Motor Vehicles Taxation Act, it was held that for an aggrieved party the limitation will run from the date when the order was communicated to him.

11. The ratio of these judgments were applied in interpreting Section 33-A(2) of the Indian Income Tax Act, 1922 in Muthia Chettiar v. CIT [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] with reference to a right of revision provided to an aggrieved assessee. Section 33-A(1) of the Act on the other hand authorised the Commissioner to suo moto call for the records of any proceedings under the Act in which an order has been passed by any authority subordinate to him and pass such order thereon as he thinks fit. The proviso, however, stated that the Commissioner shall not revise any order under that sub-section "if the order (sought to be revised) has been made more than one year previously". Construing this provision the High Court in Muthia Chettiar case [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] held that the power to call for the records and pass the order will cease with the lapse of one year from the date of the order by the

subordinate authority and the ratio of date of the knowledge of the order applicable to an aggrieved party is not applicable for the purpose of exercising suo moto power. Similarly in another decision reported in Viswanathan Chettiar v. CIT [(1954) 25 ITR 79 (Mad)] construing the time-limit for completion of an assessment under Section 34(2) of the Income Tax Act, 1922, which provided that it shall be made "within four years from the end of the year in which the income, profit and gains were first assessable," it was held that the time-limit of four years for exercise of the power should be calculated with reference to the date on which the assessment or reassessment was made and not the date on which such assessment or reassessment order made under Section 34(2) was served on the assessee.

12. It may be seen therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made : that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J. in Muthia Chettiar v. CIT [ILR 1951 Mad 815 : AIR 1951 Mad 204 : (1951) 19 ITR 402] "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

> *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".*
>
> *(emphasis supplied)*

79. Coming to the law cited by the learned Additional Advocate General, the decision in the case of **State of Punjab vs Khemi Ram; (1969) 3 SCC 28** relied by the learned Additional Advocate General may not be applicable to the present facts. It also does not run contrary to the decision in **Raja Harish Chandra Raj Singh (supra)**. In that case order of suspension was published in the Official Gazette, besides dispatch by telegram mode, and charge sheet physically dispatched to the delinquent employees' home address. Publication of any document in the Official Gazette acquires a different connotation and imparts a different texture to the issue of 'service'. The publication made in the Official Gazette is information given to the public at large as may never give any opportunity of denial of service. However, we may hasten to act no such publication exists in this case.

80. Second, more crucially, the core issue involved in that decision was the date when the suspension order (passed against a government employee) became 'effective', considering Rule 3.26(d) of the relevant service Rules. Also, Khemi Ram had been earlier issued telegram informing him about the suspension order, while he was still in service. The issue was whether such a suspension order – caused the effect of suspension from service, though physical service of the

suspension order arose after the delinquent employee had attained the age of superannuation. It was found, the suspension order became effective from the date of its issue and to that extent it was deemed communicated on the delinquent employee.

81. If we apply that analogy to the present facts, it can be said the show cause notices and the adjudication orders come into existence on the date of dispatch made through electronic mode, to the extent they may also create a demand of tax etc., against the taxpayer. However, by that attribute of communication fulfilled, it does not lead to the fulfilment of the second attribute of communication that could lead to start of running of limitation to file appeal against the adjudication order or to seek remedies against such show cause notices and Adjudication orders. For that second attribute to be fulfilled, actual or constructive service of the show cause notices and the Adjudication orders, is necessary, strictly in terms of Section 169 of the State/Central Acts. That issue was not involved in **Khemi Ram (supra)**. There, the issue was examined in the context of Rule 3.26(d) of the relevant service Rules, not shown to be *pari materia* to Section 169 of the State/Central Acts. Rather, that aspect of the law was considered in **M.M. Rubber and Co. (supra)**.

82. Then, in **Kumar Jagdish Chandra Sinha vs Commissioner of Income-tax; 1996 SCC OnLine SC 172**, the following questions of law had arisen upon reference made under Section 256(1) :

> *"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the return of income furnished by the assessee by virtue of the provisions contained in sub- section (4) of section 139 of the Income-tax Act, 1961, beyond the time allowed under sub-section (1) or sub-section (2) of the said section, could not be construed as a return furnished under either of the latter subsections and in that view holding that the assessee was not entitled to file a*

revised return under sub-section (5) of section 139 of the Income- tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the assessments made by the Income-tax Officer for the assessment years 1964- 65 and 1965-66 were within the time-limit prescribed in section 153(1)(b) of the Income-tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the cases for the assessment years 1964-65 and 1965-66 were such as falling within clause (c) of sub- section (1) of section 271 ?"

83. In view of the limited questions that arose before the Supreme Court, not directly dealing with the issue of 'communication', the observation made in paragraph no. 15 of the said report does not contain the ratio of the said decision. In that, in the absence of any recital regarding initiation of proceedings and its communication during the earlier proceedings, the consequential orders passed were found invalid. Plainly, the said decision also does not apply to the present facts.

84. Then, in **Madan Lal vs State of U.P. & Ors.; (1975) 2 SCC 779**, again it was observed as below:

*"**8.** The Act we are concerned with does not state what would happen if the Forest Settlement Officer made an order under Section 11 without notice to the parties and in their absence. In such a case, if the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in Order 20, Rule 1 of the Code of Civil Procedure; though the Forest Settlement Officer adjudicating on the claims under the Act is not a court, yet the principle which is really a principle of fair play and is applicable to all tribunals performing judicial or quasi-judicial functions must also apply to him. The point has been considered and decided by this Court in Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer [AIR 1961 SC 1500 : (1962) 1 SCR 676] . This was a case under the Land Acquisition*

Act, 1894 and the Court was considering the question of limitation under the proviso to Section 18 of that Act. Under Section 18 of the Land Acquisition Act a person who has not accepted the Collector's award can apply to the Collector requiring him to refer the matter for the determination of the court. This application has to be made within six months from the date of the Collector's award in the case where the person interested was not present or represented before the Collector at the time when he made his award or had received no notice from the Collector of the award. Construing the expression "the date of the award" this Court observed:

> *"The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way.*
>
> *... where the rights of a person are affected by any order and limitation is prescribed for the enforcement of the remedy by the person aggrieved against the said order by reference to the making of the order must mean either actual or constructive communication of the said order to the party concerned."*

85. In **Assistant Transport Commissioner, Lucknow & Ors. vs Nand Singh; (1979) 4 SCC 19**, **Raja Harish Chandra Raj Singh (supra)** was followed and it was further observed as below :

> *"**2.** In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication*

> *under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P. Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date."*

86. The decision in **Nokia India (P) Ltd vs Additional Commissioner Income Tax (2018) 92 taxmann.com 76 (Delhi)** involved validity of assessment proceedings under the Income Tax Act, 1961, in the extended period of limitation – based on another order to conduct special audit. Objecting that the assessment order was passed beyond limitation, it was relied on - that the order of special audit (that caused the extension of limitation) was served after expiry of limitation to pass the assessment order. Again, as in **Khemi Ram (supra)** the order providing for special audit was found to have become effective upon that order coming into existence and being dispatched. Accordingly, the first aspect of the communication was found fulfilled in favour of the revenue. Simultaneously, for the purpose of computation of limitation to raise challenge to such order, it was opined that the rule of actual or constructive service would continue to apply. Relying on **M.M. Rubber and Co. (supra)**, it was reasoned as below:

> *"36. **M.M. Rubber and Company (supra)** had clarified on two different principles of law relating to limitation. The first principle relates to exercise of power or an act, affecting the rights of the parties within the period of limitation prescribed. The order or decision of the authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed. This happens when the order is made or passed; that is to say when the order is made public or notified in some form or is sent*

out by the authority so as to have left his hands. Thereafter, the authority cannot tear or draft a different order. Date of communication of the order to the parties whose rights are affected is not the relevant date for purpose of deciding whether or not the order was passed within the prescribed time.

37. The second principle relates to computation of period of limitation for a party affected by the order or decision, who invokes remedy by way of appeal, revision, etc. The rule is that the period of limitation for invoking the remedy starts from the date the order is communicated to the party or the date when it is pronounced or published, whereby the party affected has a reasonable opportunity of knowing of the passing of the order or its content. Communication in the second sense is different from communication in the first sense, i.e., the first principle. Communication in the second sense must be satisfied before the decision is said to be conclusive or binding. This principle is not dependent upon the provisions of a particular statute but under the general law.

*38. Pertinently, in **M.M. Rubber and Company (supra)** it was observed that knowledge of the party affected by the decision may be either actual or constructive. Knowledge of the party affected by the decision either actual or constructive, is the essential element which must be satisfied. This is a salutary and just principle.*

39. We often overlook the aforesaid distinction when we examine the question as to whether an order has been passed within the period of limitation and apply decision with first and second principle interchangeably, which is impermissible and wrong. It is in this context we would also like to refer to the decision of the Supreme Court in CIT v. Major Tikka Khushwant Singh (1995) 212 ITR 650 (SC) which referred to the earlier decision in the case of R.K. Upadhyay v. Shanabhai P. Patel (1987) 166 ITR 163 (SC) and rejected the plea of the assessee and upheld the contention of the Revenue that the date of issue of notice would determine, if it was within the period of limitation and would give jurisdiction to the Assessing Officer to proceed and not the date on which notice was served. It was observed that the issue of notice within the statutory period gives jurisdiction but reassessment cannot be made till notice was served."

87. In **Daujee Abhushan Bhandar Pvt Ltd. vs Union of India; (2022) 136 taxmann.com 246 (Alld)**, the issue had arisen in a completely different legislative and fact context. Whether jurisdiction to re-assess had been initiated within limitation of time, was the core

issue in that case. Second, service of notice through electronic mode was admitted to the petitioner in that case. It is fundamental to re-assessment proceedings under the Income Tax Act that such proceedings may be found to be within limitation subject to the re-assessment notice being issued within time. To the extent such notice had been digitally signed on the last date of limitation and thus (admittedly) issued, through electronic mail, the issue of date of actual communication secondary to the primary issue of notice issued within time. To the extent digital signature on the re-assessment notice was found sufficient for that purpose, that fact/legal issue is not involved, here.

88. Insofar as **Union of India vs M/S G.S. Chatha Rice Mills; (2021) 2 SCC 209** is concerned, there the primary issue involved was the date and time when a statutory notification issued through electronic mode came into force. That issue is not involved here. The other issue was the consequence of bills of entry for home consumption presented for clearance. As a fact it was clear that presentation of documents preceded the time when the law was amended upon issuance of notification through electronic mode. The rate of duty being applicable at the time of import, that case was decided on the strength of time of presentation of bills of entry, for clearance. Clearly, the issue was wholly different from the present case.

89. In **Suman Jeet Agarwal vs Income Tax Officer (2022) 143 taxmann.com 11 (Delhi)**, again the issues raised were different. There was no dispute as to issue of reassessment notice, through email. At the same time, validity of reassessment notices and therefore, assumption of jurisdiction of reassessment was decided on

the own facts of that case. Where notices were found issued (even through electronic mode), within limitation, those proceedings were found valid.

90. In **Rapiscan Systems Pvt Ltd. vs ADIT (Income Tax) [2025] 170 taxmann.com 753 (Telangana)** the interpretation made to section 144C (13) of the Income Tax Act, 1961 wherein for the purpose of limitation the date on which direction was 'received' was relevant. As discussed above, though the concept of 'receipt' is contained in the IT Act, for the vital purpose of limitation to file appeal more than 'receipt', actual or constructive 'communication', is decisive, that too, on the test of actual or constructive service, in terms of Section 169 of the State/Central Act, and not in a generic or common sense test or even by way of receipt.

91. That leaves us to consider the further submissions advanced by the learned Additional Advocate General, on the strength of provisions of the Information Technology Act. While we are not in a position to accept the submissions advanced by some of the learned counsel for the petitioner that the State/Central Act are complete codes to the extent, that they admit of no applicability of the Information Technology Act, it would remain to be examined if the provisions of the Information Technology Act truly lead to an inference that the notice/order uploaded on the Common Portal would amount to service or communication for the purposes of Section 169 and 107 of the State/Central Act or it may stop at 'receipt' not amounting to actual or deemed service or 'communication'. We accept the applicability of the terms 'computer', 'computer network', 'computer resource', 'computer system', 'electronic form', 'electronic record', 'originator' and other terms defined under the Information Technology Act, to be

of relevance for the purposes of proceedings under the GST Act to the extent such proceedings being adopted through electronic mode of communication. However, Section 4 of the Information Technology Act is a provision that only allows for electronic mail or document made available through the Common Portal, to be an equivalent to a physical document. It does not create and it does not seek to introduce any element of ‘service’ or ‘communication’ of such documents. In other words, how the electronic document may be served or communicated may remain to be examined independent of Section 4 of the Information Technology Act.

92. As noted above, at present, as per the say of GSTN, and the revenue authorities, there is no mechanism to generate automatic acknowledgement or receipt of document downloaded or retrieved or viewed by an assessee/taxpayer from the Common Portal. All that is available with GSTN and therefore, to the revenue authorities, is the knowledge of actual dispatch or uploading of a document, by the revenue authorities, only.

93. To that extent, the learned Additional Advocate General, has relied on the provisions of Section 12 and 13 of the Information Technology Act. Section 13 is a provision that creates presumptions as to time and place of dispatch and receipt of certain electronic records. As to actual dispatch of an electronic record - either to upload notice or orders or dispatch of email, facts are admitted. But the petitioners here do not admit having received e-mail alerts. In any case, it is not the say of the revenue authorities that they had sent through e-mail communications, entire notices or orders as may have enabled the recipients/addressees/ taxpayers, to file appeal thereagainst. They only claim to have sent information about such notices and orders. Therefore, it may never be

claimed that by sending such intimation the addressee/recipient had been ‘communicated’ the notice or the orders or their contents, necessary to be ‘communicated’, to file any appeal thereagainst.

94. At the same time, Section 13(2) of the IT Act also provides a deeming fiction of receipt of electronic record arising the moment electronic document enters the ‘designated computer resource’. However, if such a ‘computer resource’ is not a ‘designated computer resource’, receipt may occur at the time when electronic record is retrieved by the addressee. In the present facts, the ‘designated computer resource’ means the ‘computer system’ or ‘computer network’ on which the notice or order has been uploaded. That admittedly is the Common Portal. In face of the admission made (as has been repeatedly noted above) that the GSTN is unable to ascertain, and therefore divulge the time when the Show Cause Notice or order may have been retrieved or downloaded or viewed by the addressee, therefore, that date and time of ‘communication’ through that mode [in term of Section 13(2)(a)(ii)], is indeterminate, in each of these cases.

95. Insofar as Section 13(2)(a)(ii) is concerned, to the extent the revenue authorities are unable to state when intimation of the electronic record i.e. that Show Cause Notice or the Orders was retrieved from the ‘computer resource’ through which the assessee/addressee may have access to electronic mail communication, again that issue remains indeterminate, in each of these cases. In any case, as already noted such electronic mail did not contain the contents of either the show cause notice or the adjudication order as may have enabled the addressee/recipient, to either comply or challenge such notice or adjudication order.

96. Thus, in any case, ‘receipt’ under Section 13(1) read with 13(2)(a)(i) of IT Act falls short of ‘communication’ and therefore service (actual or constructive) under Section 169 of State/Central Act and it may never amount to ‘communicated’ under Section 107 of the State/Central Act, for the purpose of start point of running of limitation to file an appeal, as no ‘acknowledgment’ has been generated under Section 12 of the IT Act and no notice has been issued under Section 12(3) of the IT Act.

97. Before parting on the issue, we may further note, even with respect to service through physical mode only upon Registered Post or Speed Post but not through Courier, the effect of deemed service may arise only when such dispatch is made with ‘acknowledgement due’ to the addressee. Thus, while creating a legal fiction in cases involving physical dispatch, element of ‘acknowledgement’ has been introduced to put in place verifiable measures. To the extent Sections 12 of the IT Act provides for ‘acknowledgement’, and further to the extent at present such acknowledgement has not been sought [in terms of Section 12(3)] it would be over simplistic to equate the two distinct modes of service, one through physical mode and the other through electronic mode, to allow for the consequences of ‘deemed service’ to arise, in both.

98. Further, it is doubtful if effect of (Show Cause Notice or Order) ‘communicated’ to the assessee may arise in law, merely on the strength of time of such notice or order entering the Common Portal of the GSTN, from where it is possible for the addressee to retrieve such document to record. It is akin to the early stages of postal service where a letter/communication dispatched by post was sorted and kept at the Post Office nearest the addressee, from where he could collect

it, at this convenience. In the absence of time stamp being available, when the addressee may have retrieved that communication and further in the absence of any notice with acknowledgment, that determination is not possible or feasible.

99. Coming to two decisions of the coordinate bench, In **Atlantis Intelligence Ltd. (supra)** in paragraph-4 of the report, it has been recorded as below:

> *"4. It is admitted by the petitioner that the petitioner was served by registered email on the very same date of passing of the impugned order. However, learned counsel appearing on behalf of petitioner, submits that there was no service made to the petitioner by way of registered post."*
>
> *(emphasis supplied)*

100. Specifically, the petitioner in that case had admitted that the email was served on the petitioner at his registered email address. Once that admission arose, the coordinate bench had only considered the effect caused. Therefore, it did not have the opportunity to examine what would follow if there was no such admission. That issue has arisen in the present case. Though dispatch through uploading and email has been claimed by GSTN and in that regard it has filed an affidavit disclosing the contents of the email, there is no admission of receipt of the same. In any case, it does not contain a copy of or the contents of the Order. However, in view of the admission made in **Atlantis Intelligence Ltd. (supra)**, the coordinate bench in paragraph-6 observed thus:

> *"Accordingly, we are of the view that service of the order by registered email is a valid service and the date on which such service is made would count as the date for the purpose of limitation."*
>
> *(emphasis supplied)*

101. Clearly, as noted above, once email was admitted to have been served on the registered email address and that service was admitted, the effect of service of the order was acknowledged. Therefore, we find no different view has been taken by the coordinate bench in **Atlantis Intelligence Ltd. (supra)** on the issue canvassed before us.

102. In **D.R. Hotels (P) Ltd. (supra)**, it was not the case of that petitioner that it had not received electronic mail. Rather, it was the case that the said email was operated by an employee who had been disengaged. To the extent receipt of email was again admitted (at the registered email address), and that fact was acknowledged between the parties, further consideration arose in that regard. Crucially, in no uncertain terms the issue examined by the coordinate bench in **D.R. Hotels (P) Ltd. (supra)**, was of maintainability of the writ petition in face of statutory remedy of appeal available. On the issue of deemed service of notice and order through electronic mode, the coordinate bench made the following pertinent observation in paragraph-18:

> *"18. …… we do not proceed to determine the question as to whether as per sub clause 2 of section 169 once the service has been effected as per sub clause (c) & (d) of section 169, it shall be deemed to have been served on the date it is tendered."*
>
> *(emphasis supplied)*

103. Thus, the coordinate bench had left the issue open but only refused to entertain the writ petition for reason of statutory remedy of appeal available. Thus, the two decisions of coordinate benches have not taken a view, different from the one proposed to be taken by us. Hence, we find no occasion to refer the matter to a larger bench. Insofar as the decisions of the other High Courts taking a contrary view, are concerned, we regret not being persuaded to take that view - that uploading a document on the Common Portal is enough

communication or service for the purpose of Section 107 of the State/ Central Acts. For the reasons noted above, we find that the deeming fiction of law created under Section 169(2) and (3) of the State/Central Act read with Sections 12 and 13 of the IT Act cannot be enlarged – to benefit the revenue, though no prejudice may be caused to it, otherwise. To equate uploading of a document on the Common Portal with 'tendering' or 'by speed post', 'publication' or 'affixation', would be over simplistic, in our humble opinion. To the extent the words used in sub-sections (2) and (3) of Section 169 of the State/Central Act exist in conjunction with other words such that 'tendering' has not been used in isolation but as 'tendering it directly' under clause (a), 'by speed post' have not been used in isolation but as 'speed post with acknowledgement due', 'publication' in clause (e) has not been used in isolation but in conjunction 'publication in a newspaper' and 'affixation' stands on a completely different footing (as discussed above), it would be over simplistic and therefore unacceptable in law to infer that a notice or order uploaded on the Common Portal may be equated with the word 'tendering' or 'publishing' and therefore, be deemed to have been served though no deeming fiction in law has been created by the legislature to reach that conclusion, for the purpose of Section 107 of the State/Central Acts.

104. Therefore, the preliminary objection raised is decided against the State. We may have relegated the present petitioners to the appeal remedy for the reasons given by us. However, we also note, even today, before dictation of this order, we have dealt with similar writ petitions in terms of the order passed in **M/s Riya Construction (supra)**. To that extent, we are persuaded to maintain consistency in these matters and to set aside individual orders and remit the matters to the Adjudicating Authority, against payment of 10% of the demand

of tax, by individual petitions, as the present petitioners have remained pending for very long. To summarise we may conclude:

(i) Service of Show Cause Notice and orders under the State/Central Act, by making such documents available on the Common Portal or by making dispatch through electronic mode, is permissible in law, and therefore a valid procedure.

(ii) No order of priority exists between the first five modes of service, that may be adopted by the revenue authorities amongst clauses (a) to (e), of Section 169(1) of the Act.

(iii) Only before adopting service through affixation under clause (f), satisfaction must be recorded that it is not 'practicable' to serve such notice or order through any of the modes specified in clauses (a) to (e). That principle has no application to the choice that the revenue authorities may otherwise make between the modes specified in clauses (a) to (e).

(iv) The deeming fiction of law leading to constructive service, is available only with respect to service effected through modes specified in Clauses (a), (b), (e) and (f) (where applicable), of Section 169(1) of the Act.

(v) By way of necessary corollary, the deeming fiction of law leading to constructive service is not available with respect to Clauses (e) and (f) of Section 169 (1) of the State/Central Acts, in view of the direct provisions of those Acts.

(vi) The IT Act is clearly applicable to the State/Central Acts, to the extent its provisions may be invoked in matters not squarely covered by or provided for under the State/Central Act. To that extent the provisions of Sections 4, 12 and 13 are invokable with reference to

'despatch' & 'receipt' service attempted through electronic modes but not to actual or constructive service provided under Section 169 of the State/Central Acts, there is no conflict between the two sets of legislation, one relating to GST laws and the other to IT laws.

(vii) To the extent there is no acknowledgement generated and further to the extent the GSTN and the revenue authorities are unaware and therefore unable to inform when any notice or order dispatched through electronic mode (made available on the Common Portal designed and managed by the GSTN), may have been retrieved or downloaded by the addressee, no inference may be drawn as to the actual date and time of such service, in terms of section 12 and 13 of the IT Act, for the purpose of Section 107 of the State/Central Acts.

(viii) To the extent it is not admitted to the petitioners that they have received any email and to the extent that fact may remain disputable, no useful purpose may ever be served in entering into that enquiry by any Court or Tribunal or authority as it may involve deep forensic investigation of the 'computer resource' used by the addressee, before any conclusion may be drawn. It would amount to immense waste of productive time and money, both by the revenue authorities and the assessees. Plainly, at present it may remain impractical and therefore, an undesirable course to be adopted. In any case, admittedly, the entire adjudication order has not even been attempted to be served through e-mail. Therefore, that order may never be described to have been 'communicated' to the petitioner, through e-mail, for the purpose of Section 107 of the State/Central Act.

(ix) Since the period of limitation to file appeal under Section 107 may start running from the date of effective 'communication' of an order, we may only note that in view of the above discussion and

conclusions drawn, in the present state of affairs effective ‘communication’ of the show cause notices and adjudication orders, may be governed by actual or constructive ‘communication’ to the assessee – of the contents of such notices and orders, strictly in terms of Section 169 of the State/Central Acts, specifically for the purpose of filing appeal or raising other challenge to an adjudication order etc.

(x) We avoid suggesting any administrative measure that the revenue authorities may adopt, since the measures proposed have been strongly objected to and it has also been informed to the Court (through ‘Y’), that the State Government cannot provide for such measures. However, we leave it to the wisdom of the State authorities to look at the practicalities of the situation and the steps taken by the Central revenue authorities, in the same situation. The assessees being one class of persons who exist in a singular tax eco-system created by uniform GST laws that are *pari materia* to each other, from beginning to end, i.e. the State Act and the Central Act, the fact that in some proceedings drawn by authorities under the Central Act, notices and orders may be issued through physical mode also, while in another set of proceedings (against the same class of persons), drawn by the State authorities, notices and orders may be issued only through electronic mode, is not desirable. It creates confusion by bringing in duality and therefore uncertainty of procedures being followed, to implement a single substantive law, leading to doubts and conflicts that have given rise to the present wholly avoidable litigation.

(xi) Suffice to note, wherever an assessee files an appeal declaring that it is within time from the date of actual ‘communication’ of the order, a presumption may arise in favour of the assessee on the strength of such declaration. The burden to prove otherwise, may lie

on the revenue - to establish that actual ‘communication’ of the contents of the Show Cause Notice or adjudication order had been made prior in time, as may have allowed the limitation to start running from such prior date. Failing that, the limitation to file appeal may be computed with reference to the date that may be disclosed by the individual assessee, in each appeal.

(xii) To the extent learned ASGI has already apprised that the central authorities are issuing physical notices and copies of the orders also through postal mode, first, in those cases the issue of start point of limitation may be determined on the date of actual or constructive service, with reference to service through physical mode, in terms of Section 169 of the State/Central Acts.

(xiii) To avoid any conflict with respect to start point of limitation, it is provided - wherever the date of ‘communication’ may be determined or be claimed through electronic and physical mode, the date of communication through offline/physical mode may prevail over service through electronic mode, unless the contrary is proved, by either party.

(xiv) We also leave it open to the revenue authorities to adopt any of the modes including physical tender through messenger etc. as was being done under the pre-existing Trade Tax/VAT regime, in the State of Uttar Pradesh.

(xv) Positive intervention by the Court may have been desirable in the facts of these cases - to direct the GSTN to take effective steps in the first place to provide for the Common Portal in the language of the State i.e. Hindi; to create Tabs for ease of use and convenience to the assessee, to view notices that are pending compliance and orders that may have been passed against him. However, we are constrained to

observe for reason of obstinate stand taken by the GSTN, demonstrating extreme reluctance at the first stage itself, to take any positive criticism of the working of its Common Portal, and the urgent need to improve it - to make it more user friendly and enable the taxpayers to make compliances and pay their revenues within time, we leave GSTN with the thought that it is not it's object of incorporation to deal with lakhs of complaints as it already has and to continue to remain rigid in its approach. Rather, its object of incorporation commends that it responds to the need of the times pro-actively, to cater to the needs of the India's growing economy and the traders and business persons who are its users and who trust and rely on such mechanism not for any other reason but to help their businesses grow, that in turn contributes to the economic growth of the country itself.

105. Accordingly, these writ petitions are **allowed**. Individual Adjudication Orders are set aside, subject to deposit of 10% of the disputed demand of tax only, within four weeks from today. Also:

(i) Subject to the individual petitioner filing a copy of this order together with proof of deposit made, before the Adjudicating Authority within a month, the Adjudicating Authority shall make available to the petitioner copy of the show cause notice together with any additional/supplementary notice etc. issued in these proceedings together with copies of Relied Upon Documents ('RUDs' in short) within a period of two weeks from the date of compliance shown by the petitioner.

(ii) Petitioners shall file individual replies, if any, within a further period of four weeks therefrom.

(iii) Thereupon the Adjudicating Authority shall fix appropriate date for hearing and communicate the same to the individual petitioner, in the manner prescribed by law with at least two weeks' advance notice.

(iv) Petitioners undertake to cooperate and participate in the proceedings and not seek any undue or long adjournment.

(v) Any amount already deposited or recovered pursuant to the impugned adjudication order, may be adjusted against the amount to be deposited against this order, which shall abide by final adjudication order.

(vi) It is expected that the proceedings thus remitted would be concluded within six months from the date of first compliance made by the petitioner.

(vii) No order as to costs.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

December 19, 2025
Faraz/Prakhar/Abhilash