

Shakuntala

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.124 OF 2023**

V.S. PRODUCTS REP BY PROP.,
MANOJ KUMAR SRIVASTAVA ... PETITIONER
Versus
ADDITIONAL COMMISSIONER
(APPEALS), AND ANR. ... RESPONDENTS

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar,
Advocates for the Petitioner.

Mr. Suzette Pereira, Advocate for Respondent No.1 and 2.

Mr. Prasheel Arolkar, Additional Government Advocate
Respondent No. 3.

CORAM: BHARAT P. DESHPANDE, J.

DATED : 8th February, 2024

P.C.

1. Heard Mr. Rivankar the learned Senior Advocate for the
Petitioner, Ms. Pereira, learned Counsel for Respondent No.1 and
2 and Mr. Arolkar, learned Additional Government Advocate for
Respondent No. 3.

2. On 25.01.2024, this Court passed the following order:

*Mr Priolkar appearing for respondent No.3 hands in
the Notification issued by the Ministry of Finance
dated 03/12/2019 by which the Government of India
notified the order called the Central Goods and
Services Tax (Ninth Removal of Difficulties, order,*

2019, which reads thus:

“NOW, THEREFORE, in exercise of the powers conferred by section 172 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendations of the Council, hereby makes the following Order, to remove the difficulties, namely:—

1. Short title.—This Order may be called the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019.

2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-

(a) the “three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal” in sub-section (1) of section 112, the start of the three months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office;

(b) the “six months from the date on which the said order has been passed” in sub-section (3) of section 112, the start of the six months period shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate

Tribunal after its constitution under section 109, enters office”

2. By this order the difficulties with regard to filing of appeal and period of limitation have been clarified.

3. He further submits that vide notification dated 14/09/2023 issued by the Ministry of Finance and in exercise of sub-Section 4 of Section 109 of Central Goods and Services Tax Act, 2017, the Government constituted number of State Benches of goods and services Appellate Tribunal as per the chart below:

<i>S.No</i>	<i>State Name</i>	<i>No. of Benches</i>	<i>Location</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>1</i>	<i>Andhra Pradesh</i>	<i>1</i>	<i>Vishakhapatnam and Vijayawada</i>
<i>2</i>	<i>Bihar</i>	<i>1</i>	<i>Patna</i>
<i>3</i>	<i>Chhattisgarh</i>	<i>1</i>	<i>Raipur and Bilaspur</i>
<i>4</i>	<i>Delhi</i>	<i>1</i>	<i>Delhi</i>
<i>5</i>	<i>Gujarat</i>	<i>2</i>	<i>Ahmedabad, Surat and Rajkot</i>
<i>6</i>	<i>Dadra and Nagar Haveli and Daman and Diu</i>		
<i>7</i>	<i>Haryana</i>	<i>1</i>	<i>Gurugram and Hissar</i>
<i>8</i>	<i>Himachal Pradesh</i>	<i>1</i>	<i>Shimla</i>
<i>9</i>	<i>Jammu and Kashmir</i>	<i>1</i>	<i>Jammu and Srinagar</i>
<i>10</i>	<i>Ladakh</i>		
<i>11</i>	<i>Jharkhand</i>	<i>1</i>	<i>Ranchi</i>
<i>12</i>	<i>Karnataka</i>	<i>2</i>	<i>Bengaluru</i>

13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep		
15	Madhya Pradesh	1	Bhopal
16	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad and Panaji
17	Maharashtra		
18	Odisha	1	Cuttack
19	Punjab	1	Chandigarh and Jalandhar
20	Chandigarh		
21	Rajasthan	2	Jaipur and Jodhpur
22	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23	Puducherry		
24	Telangana	1	Hyderabad
25	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26	Uttarakhand	1	Dehradun
27	Andaman and Nicobar Islands	2	Kolkata
28	Sikkim		
29	West Bengal		
30	Arunachal Pradesh	1	Guwahati Aizawl(Circuit)
31	Assam		Agartala(Circuit)
32	Manipur		Kohima (Circuit)
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

4. At Serial No.16 the State of Goa is referred with

regard to constitution of State Bench at Panaji. It also refers to the other benches constituted in the State of Maharashtra.

5. Mr Priolkar submits that right to file appeal is protected together with limitation as provided in the order of 2019 quoted above.

6. Mr. Priolkar admits that as on date, the Chairperson and the members of the State Tribunal are not notified. He submits that there is likelihood of notifying the names of Chairperson and members of Goa Bench shortly.

7. Mr. Rivankar, learned Senior Counsel submits that he will take necessary instructions as to whether the appeal can be filed at the Principal Bench at Delhi or at the State Bench if the same is constituted by notifying the members shortly.

8. Stand over to 08/02/2024 for further consideration.

3. Today Mr. Rivankar would submit that even though the notification is issued by the Government constituting the State Bench, the same is not operational. He submits that the provision of Section 109 of the Central Goods and Service Tax Act 2017, provides that the Government shall notify the State Benches at such places with such jurisdiction as may be recommended by the Council which shall consist of two Judicial Members, a Technical Member (Central) and a Technical Member (State).

4. He submits that Appeal before the Principal Bench could be entertained only if the issue involved relates to the place of supply.

The place of supply is defined u/s 2(86). He submits that the case of the Petitioner is not in connection with integrated Goods and Service Tax Act.

5. Mr. Rivankar would submit that since the State Bench is not constituted, petition should be entertained. He submits that even if the Petitioner is relegated to appeal to be presented before the Principal Bench, he will be losing an opportunity to challenge it before this Court.

6. The fact remains that by way of notification issued by the Government, State Bench is already notified at Goa on 14.09.2023. It is no doubt true that the State till date failed to constitute the Members of the State Bench by appointing such Members as provided under Section 109(4).

7. The fact remains that the Principal Bench is functioning. When the State Bench is not in operation, the Petitioner could very well approach the Principal Bench by filing an Appeal in order to redress grievances.

8. The Petitioner may file such an Appeal before the Principal Bench and if in the meantime the Members are appointed by the State Bench at Goa, such an Appeal could be relegated to the State Bench for the purpose of adjudication. The contentions of the Petitioner will be kept open in such circumstances.

9. If the Members of the State Bench are not appointed, the Principal Bench may entertain such Appeal in accordance with law.

10. In view of the above observations and the fact that the Petitioner is having an alternate efficacious remedy by way of filing an Appeal against the impugned Order, the Petition could be disposed of by granting liberty to the Petitioner to approach the Appellate Authority constituted under section 109 of the Central Act.

11. If the Members of the State Bench are not appointed in the near future, the Appeal could be entertained by the Principal Bench.

12. With these observations and liberty granted to the Petitioner, the Petition stands disposed of.

13. The concerned Appellate Court shall consider the time spent by the Petitioner before this Court while considering the application for condonation of delay.

13. Mr. Rivankar, submits that Petitioner will file an Appeal within a period of 4 weeks from today along with the application for delay. The Principal Bench shall consider such application on its own merits and with the fact that the Petitioner was litigating before this Court in absence of State Bench.

14. Parties to act on an authenticated copy of this Order.

BHARAT P. DESHPANDE, J.