IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14957 of 2024

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M/s Brand Protection Services Private Limited a Private Limited Company incorporated under the Companies Act, 1956 and having its registered office at 3rd Floor, Aastha Building, Miss Mandal Compound, P.O.- S.K. Puri, P.S.- Buddha Colony, Boring Road Chauraha, Patna, Bihar, 800001 through its Director namely Mustufa Hussain, Male, aged about 48 Years, Son of Syed Manzar Hussain, residing at 102, Shakti Sadan Apartment, Ashiana Digha Road, P.O.- B.V. College, P.S.- Shastri Nagar, Raja Bazar, Rukanpura, District- Patna, Bihar- 800014.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Commercial Tax Department, Government of Bihar.
2. The Assistant Commissioner of State Tax, Patna Special Circle, Patna, Bihar.
3. The Additional Commissioner of State Tax (Appeals), Central Division, Patna, Bihar.

... ... Respondents

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Central Goods and Services Tax Act (CGST), 2017--- Bihar Goods and Services Tax Act (BGST), 2017---section 107, 73(9), 50--- Limitation Act, 1963---section 4, 12(1), (2)--- General Clauses Act---section 9---Calculation of prescribed period for filing appeal under CGST/BGST Act---writ petition to quash Appellate order whereby and whereunder Petitioner's appeal against the impugned demand order was rejected on the solitary ground of limitation---plea that the appellate authority has taken an erroneous view that the time limit of Four Months (including the condonable period of One month) from the date of communication of order for filing an appeal, is equivalent to 120 days and not Four Calendar Months---Findings: the date on which the appellate order was received by the petitioner is liable to be excluded in counting the prescribed period of limitation---- the appeal was preferred within one month after the expiry of the prescribed period of limitation of three months--- the three months period from the date of receipt of the order of the adjudicating authority expired on 27.03.2024---the appellant could have preferred an appeal within a further period of one month i.e. 27.04.2024 showing sufficient cause to the appellate authority to satisfy him that the appellant was prevented by sufficient cause from presenting the appeal within the further period of one month---the appeal was preferred on 26.04.2024, therefore, the appellate authority was required to consider the cause shown by the appellant to condone the delay--- the appellate authority has

*completely erred in appreciating the legislative scheme under Section 107 of the CGST/BGST Act--- legislatures have clearly provided in wisdom that the period of limitation for filing the appeal would be three months and it may be presented within a further period of one month subject to showing sufficient cause to the appellate authority for not preferring the appeal within the prescribed period of limitation--- impugned order set aside---**writ allowed.***

(Para- 21, 28, 30, 31)

(2014) 11 SCC 769, (1999) 3 SCC 1, (1999) 4 SCC 567, (1972) 1 SCC 639, (2000) 8 SCC 649, (2001) 7 SCC 197, (2010) 12 SCC 210, (2012) 2 SCC 624, (2003) 5 SCC 448

…….……..***Referred To.***

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Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Commercial Tax Department, Government of Bihar.
2. The Assistant Commissioner of State Tax, Patna Special Circle, Patna, Bihar.
3. The Additional Commissioner of State Tax (Appeals), Central Division, Patna, Bihar.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr. Anubhav Khowala, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-02-2025

This writ application has been preferred seeking the following reliefs:-

> "(i) For issuance of a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing of the Appellate Order in form APL-02 bearing reference no. ZD100524014826Q dated 18.05.2024 along with a detailed Order bearing Memo No 529 dated 18.05.2024 (Annexure P/4 series) issued by the respondent no. 3, whereby the appeal preferred by the petitioner under section 107 of the Central

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Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST, Act 2017" for short) or the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the BGST Act, 2017 for short) in Form GST APL-01 on 26.04.2024(Annexure P/3 Series), against the impugned Demand Order passed by respondent no 2, u/s 73(9) of the BGST/CGST Act, 2017 dated 27.12.2023, along with its summary order in Form DRC-07 bearing Reference No. ZD1012230343049, demanding a tax of Rs. 21,21,878/-, interest under Section 50 of Rs. 77,97,004, and penalty of Rs. 8,12,188/- for the tax period July 2017-March 2018 (Annexure P/2) has been rejected on the solitary ground of limitation.

(ii) For further issuance of a writ or order or direction upon the respondent number 3 to admit and accept the appeal filed by the petitioner in form GST APL-01 on 26.04.2024 (Annexure P/3Series), against the impugned Demand order dated 27.12.2023 passed by respondent no 2, as the Respondent no 3 without the proper application of mind, misinterpreting the provisions of section 107 of the CGST/BGST Act 2017 to conclude that the time limit of Four Months (including the condonable period of One month) from the date of communication of order for filing an appeal, is equivalent to 120 days and not Four Calendar Months, without hearing the appeal on merits although it was filed within the time limit prescribed under section 107 of the CGST/BGST Act,2017, has rejected this appeal at the admission stage by passing the impugned Appeal Order dated 18.05.2023 and these actions of Respondent no 3 are in violation of the

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principles of Natural Justice and the provisions of the section 107 of the CGST/BGST Act, 2017 and the respondent no 3 may further be directed to notify the petitioner about the acceptance of appeal and to decide the appeal on merits by issuing the appeal order in APL-04 after providing an opportunity of personal hearing to the petitioner to represent their case in accordance with the scheme of the CGST/BGST Act, 2017;

(iii) For further issuance of a writ or order or direction restraining the Respondents and any other authority executing any of the directions issued by the said respondents, from taking any coercive action for recovery of the remaining amount of tax, interest and penalty demanded in terms of the impugned order dated 27.12.2023 passed by the respondent no 2 during the pendency of this writ application.

(iv) For further issuance of any other appropriate writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

Brief facts of the case

2. The petitioner is a private limited company incorporated under the provisions of the Companies Act, 1956 having its registered office at Patna. It is registered in the State of Bihar under the provisions of the Central Goods and Services Tax (hereinafter referred to as the ‘CGST Act’ or the ‘Act of 2017’) *vide* GSTIN No. 10AAACT5131AIZC. It is stated that the provisions of Sections of CGST Act, 2017 read along with relevant rules are at *pari materia* with the provisions of Bihar Goods and Services Tax Act, 2017 (hereinafter called ‘BGST Act, 2017’).

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Submission on behalf of the petitioner

3. Learned counsel for the petitioner submits that a GST proceeding was initiated against the petitioner by respondent no. 2 *vide* show-cause notice under Section 73(1) of the BGST/CGST Act, 2017 for the tax period July 2017 to March 2018. In the show-cause notice, a direction was issued to the petitioner to make payment of outstanding demand of tax amounting to Rs. 81,21,878/- along with interest under Section 50 amounting to Rs. 77,97,004 and penalty of Rs. 8,12,187/- respectively. The petitioner was called upon to submit its reply on or before 27.09.2023. A date of personal hearing was fixed on 10.10.2023. A copy of the show-cause notice has been enclosed as Annexure 'P/1' to the writ application. Learned counsel for the petitioner submits that on perusal of Annexure 'P/1' even as a date of hearing has been fixed but that would not be taken as an effective date.

4. It is submitted that respondent no. 2 issued two reminder notices calling upon the petitioner to submit his reply by 08.12.2023. In response to those notices, the petitioner filed his reply requesting additional time of fifteen days to reconcile purchase details due to unavailability of one of its suppliers. Thereafter, respondent no. 3 issued a reminder notice dated 22.10.2023 whereby the petitioner was called upon to submit his

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reply by next day. Those correspondences have not been brought on record as according to the petitioner, in the kind of issue involved in the present writ application, those are not very relevant to be gone into.

5. The petitioner is aggrieved by and dissatisfied with a final demand order under Section 73(9) of the CGST-BGST Act, 2017 dated 27.12.2023 along with its summary order in Form DRC-07 demanding a tax of Rs. 81,21,878/- and interest etc. A copy of the demand notice dated 27.12.2023 and the summary of the order in Form GSTDRC-07 is Annexure ‘P/2’ to the writ application.

6. The petitioner preferred an appeal online availing his remedy of appeal under Section 107 of the CGST/BGST Act, 2017 in form GSTAPL-01 on 26.04.2024 before respondent no.3. It is his submission that the appeal could not be filed within the statutory time limit of three months from the date of communication of the order as mandated under Section 107(1) of the Act of 2017 due to ill health of the Director of the petitioner company. It is, however, the contention of learned counsel for the petitioner that the appeal was filed within the condonable period of one month as provided under sub-section (4) of Section 107 of the Act of 2017. The appellant explained the reasons for delay in filing

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of the appeal. In this connection, learned counsel has shown that the reasons have been mentioned in the Form GST APL-01. The appellant also made payment of the pre-deposit of ten percent of the disputed tax amount in terms of sub-section (6) of Section 107 of the Act of 2017.

7. The appellate authority, however, rejected the appeal at the admission stage itself by issuing APL-02 bearing reference no. ZD100524014826Q dated 18.05.2024 along with an Order Bearing Memo No. 529 dated 18.05.2024, solely on the ground of delay in filing the appeal. A copy of the appellate order has been placed on record wide Annexure ‘P/4’ series. Learned counsel for the petitioner submits that the appellate authority has taken an erroneous view that the appeal was required to be filed within a time period of 120 days (including the extended period of one month) from the date of communication of the order. It is submitted that the views expressed by the learned appellate authority is in the teeth of the statute as well as the judgment of the Hon’ble Supreme Court in the case of **State of Himachal Pradesh and Anr. vs. Himachal Techno Engineers and Anr.** reported in **(2010) 12 SCC 210**, **Bibi Salma Khatoon vs. State of Bihar** reported in **(2001) 7 SCC 197** and **Econ Antri Limited vs. Rom Industries Limited and Anr.** reported in **(2014) 11 SCC 769.**

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8. Learned counsel has further relied on a recent judgment of the Hon'ble Supreme Court in the case of **State of West Bengal represented through the Secretary and Ors. vs. Rajpath Contractors and Engineers Ltd.** reported in **2024 7 SCR 1 : 2024 INSC 477**. It is submitted that the impugned appellate order rejecting the appeal of the petitioner is bad in law and is liable to be set aside.

Stand of the State

9. Mr. Vivek Prasad, learned GP-7 has opposed the writ application on the strength of the averments made in the counter affidavit. It is submitted that the appellate authority has rightly rejected the appeal as it was filed neither within three months of the assessment order nor within the extended window of further one month.

10. Learned counsel submits that a month is taken to be a thirty day period. In this connection, judgment of the Hon'ble Patna High Court in the case of **M/s. Vaishnavi Enterprises versus the State of Bihar and others (CWJC No. 11172 of 2024)** has been referred to wherein it has been held that in a case where the adjudication order had been communicated to the taxpayer on 14.05.2023, the appeal had to be filed on or before 12.08.2023. If a further window of one month provided under Section 107(4) is

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added to this, the appeal should have been filed latest by 11.09.2023. It is his submission that in a plethora of cases, the Hon'ble Patna High Court has taken similar view. Thus, learned counsel for the State has submitted that the claim of the petitioner that the four month window had not expired on 26.04.2024 which is the date on which the appeal had been filed in the instant matter is erroneous and baseless.

11. Responding to the submissions of learned GP-7, learned counsel for the petitioner submits that the judgment in the case of **M/s Vaishnavi Enterprises** (*supra*) has been passed in ignorance of the Scheme of Section 107 of the Act of 2017 and also in ignorance of the judgment of the Hon'ble Supreme Court as referred above. Relying upon the judgment of the Hon'ble Supreme Court in the case of **State of Bihar vs. Kalika Kuer @ Kalika Singh & Ors.** reported in **(2003) 5 SCC 448** (paragraph nos. '5', '6' and '7') it is submitted that **M/s Vaishnavi Enterprises** (*supra*) judgment would be *per incuriam*.

Consideration

12. The pleadings available on the record demonstrate that the one and only issue which is involved in the present writ application is as to whether the period of three months mentioned in sub-section (1) and the period of one month under sub-section

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(4) of Section 107 of the Act of 2017 is liable to be interpreted as a period of ninety days and thirty days respectively as has been held by the learned appellate authority? While it is the contention of learned counsel for the petitioner that the legislatures in their wisdom have provided a period of limitation of three months for filing the appeal and has provided a condonable period of one month, any interpretation treating the period of limitation in form of number of days as ninety days and thirty days respectively would be erroneous.

13. Learned counsel for the State has supported the view of the appellate authority that a month be taken as thirty days only from the date on which the cause of action arose.

14. At this stage, we quote Section 107 of the Act of 2017 hereunder for a ready reference:-

> [1]**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.
>
> (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act

1. Enforced w.e.f.-1-7-2017 vide Noti. No. 9/2017-Central Tax, dt. 28-6-2017.

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or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(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) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid--

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [2][subject to a maximum of [3][twenty] crore rupees,] in relation to which the appeal has been filed:

2. Inserted by the CGST (Amdt.) Act, 2018 (31 of 2018), dt. 30-8-2018, w.e.f. 1-2-2019 vide Noti. No. 02/2019-Central Tax, dt. 29-1-2019.
3. Substituted for ‘twenty-five” by Finance (No.2) Act, 2024 (15 of 2024), dt. 16-8-2024,w.e.f 1-11-2024 vide SO 4253(E), dt. 27-9-2024.

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[4][PROVIDED that no appeal shall be filed against an order under sub-section (3) of Section 129, unless a sum equal to twenty-five percent. of the penalty has been paid by the appellant.]

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

PROVIDED that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(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:

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4. Inserted by Finance Act, 2021, w.e.f. 1-1-2022 vide Noti. No. 39/2021-Central Tax, dt. 21-12-2021

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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 [1][or section 74A].

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties."

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3. Inserted by Finance (No.2) Act, 2024 (15 of 2024), dt. 16-8-2024,w.e.f 1-11-2024 vide SO 4253(E), dt. 27-9-2024.

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15. On a bare reading of sub-section (1) of Section 107 of the Act of 2017, it would appear that the prescribed period for filing an appeal before the appellate authority against an order of the adjudicating authority is three months from the date on which the said decision or order is communicated to the said person. It is also evident that under sub-section (4), the appellate authority has power to condone a delay of further period of one month if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months.

16. In the case of **Econ Antri Limited** (*supra*), the Hon'ble Supreme Court was considering a reference made by the Hon'ble Supreme Court in the following terms:-

> In our view, the judgment relied upon by the counsel for the appellant in *Saketh India Ltd.* v. *India Securities Ltd.*[2] requires reconsideration. Orders of the Hon'ble the Chief Justice may be obtained for placing this matter before a larger Bench."

17. In the case of **Saketh India Ltd. vs. India Securities Ltd.** reported in **(1999) 3 SCC 1**, the Hon'ble Supreme Court considered a question of law as under:-

> 2. … whether the complaint filed … under Section 138 of the Negotiable Instruments Act, 1881 is within or beyond time as it is contended that it is not filed within one month from the date on which the cause of action arose under clause (c) of the proviso to Section 138 of the Negotiable Instruments Act?"

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2. (1999) 3 SCC 1: 1999 SCC (Cri) 329

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The same question was reframed in the following words:-

> "5. … whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose?"

18. The judgment of the Hon'ble Supreme Court in the case of **Saketh India Ltd**. (*supra*) and in **SIL Import, USA vs. Exim Aides Silk Exporters** reported in **(1999) 4 SCC 567** were at variance, therefore, the Hon'ble Supreme Court took up this matter for consideration. It was found that in the case of **Saketh India Ltd.** (*supra*), the Hon'ble Supreme Court had been pleased to place reliance upon Section 12(1) and (2) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897. Further, relying upon several decisions on this point, the Hon'ble Supreme Court observed in the **Saketh India Ltd.** (*supra*) that principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897. The Hon'ble Supreme Court referred the relevant part of paragraph '5' of its judgment in the case of **Haru Das Gupta vs. State of W.B.** reported in **(1972) 1 SCC 639** which we quote hereunder for a ready reference:-

> "5. … The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. … the

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effect of defining [the] period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day."

19. The Hon'ble Supreme Court in the case of **Econ Antri Ltd.** (supra) quoted some paragraphs from the judgment in the case of **Tarun Prasad Chatterjee vs. Dinanath Sharma** reported in **(2000) 8 SCC 649**. The relevant part of paragraph nos. '11' and '12' of **Tarun Prasad Chatterjee** (*supra*) case are being reproduced hereunder:-

"*11*. … '*Days included or excluded*.—When a period of time running from a given day or event to another day or event is prescribed by law or fixed by contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day.

"*12*. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the

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> insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation."

20. In its ultimate analysis, the Hon'ble Supreme Court in the case of **Econ Antri Ltd.** observed in paragraph '41' and '42' as under:-

> **41.** We may, at this stage, note that the learned counsel for the appellant relied on *State of H.P.*[7] where, while considering the question of computation of three months' limitation period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the Arbitration Act, this Court held that having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, day from which such period is to be reckoned is to be excluded for calculating limitation. It was pointed out by the counsel for the respondents that Section 43 of the Arbitration Act makes the Limitation Act, 1963 applicable to the Arbitration Act whereas it is held to be not applicable to the NI Act and, therefore, this judgment would not be applicable to the present case. We have noted that in this case reliance is not merely placed on Section 12(1) of the Limitation Act. Reliance is also placed on Section 9 of the General Clauses Act. However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded, it is not necessary to discuss whether *State of H.P.*[7] is applicable to this case or not because Section 12(1) of the Limitation Act is relied upon therein.
>
> **42.** Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that *Saketh*[2] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that *SIL Import, USA*[3] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in *Saketh*[2] by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.

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7. State of H. P. v. Himachal Techno Engineers, (2010) 12 SCC 210:(2010) 4 SCC (Civ) 605
2. Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329
3. SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567 : 1999 SCC (Cri) 600

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21. From the aforementioned discussions on the case-laws, we conclude that by virtue of Section 9 of the General Clauses Act, the date i.e. 27.12.2018 on which the appellate order was received by the petitioner is liable to be excluded in counting the prescribed period of limitation i.e. three months but can it be said that section 107(1) prescribed a period of limitation which would be ninety days treating one month equal to thirty days?

22. In the case of **Bibi Salma Khatoon** (*supra*), the Hon'ble Supreme Court was considering a challenge to the order of the appellate authority rejecting the appeal on the ground of limitation. Section 16(3) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the 'Act of 1961' reads as under:-

> "16. (3)(*i*) When any transfer of land is made after the commencement of this Act to any person other than a co-sharer or a raiyat of adjoining land, any co-sharer of the transferor or any raiyat holding land adjoining the land transferred, shall be entitled, within three months of the date of registration of the documents of transfer, to make an application before the Collector in the prescribed manner for the transfer of the land to him on the terms and conditions contained in the said deed: (*emphasis supplied*)
>
> Provided that no such application shall be entertained by the Collector unless the purchase money together with a sum equal to ten per cent thereof is deposited in the prescribed manner within the said period.
>
> (*ii*) On such deposit being made the co-sharer or the raiyat shall be entitled to be put in possession of the land irrespective of the fact that the application under clause (*i*) is pending for decision:
>
> Provided that where the application is rejected, the co-sharer or the raiyat, as the case may be, shall be evicted from the land and possession thereof shall be restored to the transferor (*sic* transferee) and the transferee shall be entitled to be paid a

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> sum equal to ten per cent of the purchase money out of the deposit made under clause (*i*).
>
> (*iii*) If the application is allowed, the Collector shall by an order, direct the transferee to convey the land in favour of the applicant by executing and registering a document of transfer within a period to be specified in the order and, if he neglects or refuses to comply with the direction, the procedure prescribed in Order 21 Rule 34 of the Code of Civil Procedure, 1908 (5 of 1908), shall be, so far as may be, followed."

23. The period of limitation provided for making an application for the reliefs before the Collector has been provided as three months from the date of registration of the document of transfer. A question arose as to what is meant by the word "month". The Hon'ble Supreme Court discussed the relevant provision of the Bihar and Orissa General Clauses Act, 1917 and the Halsbury's Laws of England. The views of the Hon'ble Supreme Court on this point may be found in paragraph '8' of the judgment in the case of **Bibi Salma Khatoon** (*supra*) which we reproduce hereunder:-

> "**8.** Here we are concerned with compliance with requirement of making application within the prescribed period of three months. The question arises, what is meant by the word "month". Sub-section (34) of Section 4 of the Bihar and Orissa General Clauses Act, 1917 defines the word "month" to mean a month reckoned according to the British calendar. This means Gregorian calendar — January, February … etc. Mr Jha has drawn our attention to Section 11 of the said Act of 1917 to point out that when the word "from" is used the first in the series of days or any other period of time has to be excluded and when the word "to" is used the last in a series of days or any other period of time has to be included but in this case the word "of" is used so that section will not apply. A perusal of Section 11 shows that it is an aid for drafting a provision rather than for interpreting the provision of the Act. Be that as it may, since the Act does not expressly exclude Sections 4 to 14 of the Limitation Act, they apply to application under Section 16(3) of the Act. Therefore, the date from which the limitation

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commences has to be excluded in computing the period of limitation of three months. In *Halsbury's Laws of England*, 4th Edn., para 211* method of computation of month is given as follows:

> "211. *Calendar month running from arbitrary date.*—When the period prescribed is a calendar month running from any arbitrary date the period expires upon the day in the succeeding month corresponding to the date upon which the period starts, save that, if the period starts at the end of a calendar month which contains more days than the next succeeding month, the period expires at the end of that succeeding month.
>
> If a period of one calendar month includes the last day of February there must be 29 or 28 days, according as the year is or is not a leap year."

Thus computed, the application filed by the appellant on 30-4-1988 is within limitation — a period of three months of the date of the registered sale deed dated 30-1-1988. In this view of the matter, we are unable to sustain the order under challenge. We set aside the impugned order, restore the second appeal and remit the case to the High Court for disposal in accordance with law."

24. In yet another case of **Himachal Techno Engineers** (*supra*), the same question fell for consideration in relation to Section 34(3) and its proviso under the Arbitration and Conciliation Act, 1996. Paragraph '14', '15' and '16' of the judgment in case of **Himachal Techno Engineers** (*supra*) are being reproduced hereunder for a ready reference:-

> "**14.** The High Court has held that "three months" mentioned in Section 34(3) of the Act refers to a period of 90 days. This is erroneous. A "month" does not refer to a period of thirty days, but refers to the actual period of a calendar month. If the month is April, June, September or November, the period of the month will be thirty days. If the month is January, March, May, July, August, October or December, the period of the month will be thirty-one days. If the month is February, the period will be twenty-nine days or twenty-eight days depending upon whether it is a leap year or not.

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* Ed:See in the first issue of 4th Edition in Vol. 45, para 1111

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> **15.** Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as "three months" and "one month" respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.
>
> **16.** Section 3(35) of the General Clauses Act, 1897 defines a "month" as meaning a month reckoned according to the British calendar."

25. In a recent judgment, in case of **State of West Bengal vs. Rajpath Contractors and Engineers Ltd.**, (*supra*) the Hon'ble Supreme Court considered sub-section 3 of Section 34 of the Arbitration and Consolidation Act, 1996 and Section 4 of the Limitation Act. In the said case it was found that the award made by the Arbitral Tribunal on 30th of June, 2022 was served upon the appellant on the same day. The period of limitation for filing petition under sub-section 3 of Section 34 is three months from the date on which the party making the application had received the arbitral award or, if a request had been made under Section 33 of the Arbitratioin Act, from the date on which that request had been disposed off by the Arbitral Tribunal. The starting point of the period of limitation was 1st of July, 2022, therefore, it was held that the last day of the period of three months i.e. 30th September, 2022 would be the period of limitation. In the said case, admittedly the

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application under sub-section 3 of Section 34 was not filed by 30th of September, 2022. The Pooja Vacation started in the High Court from 1st of October, 2022 and continued till 30th of October, 2022 (both days inclusive). The petition under Section 34 of the Arbitration Act was filed on 31st October, 2022. The Hon'ble Supreme Court found that by virtue of Section 43 of the Arbitration Act, the Limitation Act shall apply to the arbitrators as it applies to the proceedings in the court. The Hon'ble Supreme Court considered Section 4 of the Limitation Act which reads as under:-

> "**4. Expiry of prescribed period when court is closed.**— Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.
> Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day."

26. The Hon'ble Supreme Court in the case of **Rajpath Contractors and Engineers Ltd.** (supra) referred **Assam Urban Water Supply & Sewerage Board vs. Subash Projects & Mktg. Ltd.** reported in **(2012) 2 SCC 624** and quoted paragraph '13' of the said judgment wherein it has been held that the crucial words in Section 4 of the 1963 Act are "prescribed period". The Hon'ble Supreme Court thereafter proceeded to consider the same and answered that in the case of **Rajpath Contractors and Engineers Limited** (*supra*). Since the present case does not involve any issue

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with regard to applicability of Section ‘4’ of the Limitation Act, we need not go into that issue. Suffice is to say that in this case, Hon’ble Supreme Court held that the period of three months expired on 30th September. If controverted in days, it would be ‘92’ days, therefore, this is yet another binding precedent on the subject.

27. At this stage, we must take note of the judgment of the learned coordinate Bench in case of **M/s Vaishnavi Enterprises** (*supra*). State has placed reliance on this judgment. On a bare reading of the said judgment, we find that the learned coordinate Bench has taken a view that against the order impugned dated 14.05.2023, in the appeal, the appeal was to be filed on or before 12.08.2023 and if necessary with a delay condonation application within one month thereafter, i.e. on or before 11.09.2023. The learned coordinate Bench found that the appeal was filed only on 20.03.2024, after the limitation period expired. Thus, in **M/s Vaishnavi Enterprises** (*supra*), the learned coordinate Bench took the period of limitation of three months as a period of 90 days.

28. At first instance, we find that in the said case, the appeal was filed beyond one month from the date of expiry of the prescribed period of limitation. In the present case, however, on fact we find that the appeal was preferred within one month after the expiry of the prescribed period of limitation of three months. So far as the observations of the learned coordinate Bench that an

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appeal was to be filed on or before 12.08.2023 is concerned, that observation is in ignorance of the statute and the binding precedents of the superior court.

29. In the case of **Kalika Kuer** (*supra*), the Hon'ble Supreme Court has been pleased to consider as to in what circumstances a decision can be considered to have been rendered *per incuriam*. Paragraph '5' and '6' of the judgment in the case of **Kalika Kuer** (*supra*) are being reproduced hereunder for a ready reference:-

> **5.** At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered per incuriam. In *Halsbury's Laws of England* (4th Edn.) Vol. 26: *Judgment and Orders*: *Judicial Decisions as Authorities* (pp. 297-98, para 578) we find it observed about per incuriam as follows:
>
> > "A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow[2]; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force[3]. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties[4], or because the court had not the benefit of the best argument[5], and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority[6]. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake."[7]

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2. [*Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. In *Huddersfield Police Authority* v. *Watson*, 1947 KB 842 : (1947) 2 All ER 193.]
3. [*Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. see also *Lancaster Motor Co. (London) Ltd.* v. *Bremith Ltd.*, (1941) 1 KB 675 : (1941) 2 All ER 11. For a Divisional Court decision disregarded by that court as being per incuriam, see *Nicholas* v. *Penny*, (1950) 2 KB 466 : (1950) 2 All ER 89.] .
4. [*Morelle Ltd.* v. *Wakeling*, (1955) 2 QB 379 : (1955) 1 All ER 708 (CA)]
5. [*Bryers* v. *Canadian Pacific Steamships Ltd.*, (1957) 1 QB 134 : (1956) 3 All ER 560 (CA) Per Singleton, L.J., affirmed in *Canadian Pacific Steamships Ltd.* v. *Bryers*1958 AC 485 : (1957) 3 All ER 572.]
6.[*A. and J. Mucklow Ltd.* v. *IRC*, 1954 Ch 615 : (1954) 2 All ER 508 (CA), *Morelle Ltd.* v. *Wakeling*, (1955) 2 QB 379 : (1955) 1 All ER 708 (CA), see also *Bonsor* v. *Musicians' Union*, 1954 Ch 479 : (1954) 1 All ER 822 (CA), where the per incuriam contention was rejected and, on appeal to the House of Lords although the House overruled the case which bound the Court of Appeal, the House agreed that that court had been bound by it; see *Bonsor* v. *Musicians' Union*, 1956 AC 104 : (1955) 3 All ER 518 (HL).] .
7. [*Williams* v. *Glasbrook Bros. Ltd.*, (1947) 2 All ER 884 (CA)]

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> Lord Godard, C.J. in *Huddersfield Police Authorities case*[2] observed that where a case or statute had not been brought to the court's attention and the court gave the decision in ignorance or forgetfulness of the existence of the case or statute, it would be a decision rendered in per incuriam.
>
> **6.** In a decision of this Court reported in *Govt. of A.P.* v. *B. Satyanarayana Rao*[8] it has been held as follows: (SCC pp. 264-65, para 8)
>
> > "The rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue. …We, therefore, find that the rule of per incuriam cannot be invoked in the present case. Moreover, a case cannot be referred to a larger Bench on mere asking of a party. A decision by two Judges has a binding effect on another coordinate Bench of two Judges, unless it is demonstrated that the said decision by any subsequent change in law or decision ceases to laying down a correct law."

30. From the judgments of the Hon'ble Supreme Court quoted hereinabove, we have no iota of doubt that in the present case, the three months period from the date of receipt of the order of the adjudicating authority expired on 27.03.2024. The appellant could have preferred an appeal within a further period of one month i.e. 27.04.2024 showing sufficient cause to the appellate authority to satisfy him that the appellant was prevented by sufficient cause from presenting the appeal within the further period of one month. In this case, the appeal was preferred on 26.04.2024, therefore, the appellate authority was required to consider the cause shown by the appellant to condone the delay.

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2. [*Young* v. *Bristol Aeroplane Co. Ltd.*, 1944 KB 718 at 729 : (1944) 2 All ER 293 at 300. In *Huddersfield Police Authority* v. *Watson*, 1947 KB 842 : (1947) 2 All ER 193.]
8. [(2000) 4 SCC 262 : 2000 SCC (L&S) 486]

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31. We are of the considered opinion that the appellate authority has completely erred in appreciating the legislative scheme under Section 107 of the CGST/BGST Act. The legislatures have clearly provided in wisdom that the period of limitation for filing the appeal would be three months and it may be presented within a further period of one month subject to showing sufficient cause to the appellate authority for not preferring the appeal within the prescribed period of limitation.

32. The impugned order dated 18.05.2024 as contained in Annexure ‘P/4’ is hereby set aside. The writ application is allowed

33. The appellate authority shall restore the appeal to its original file and consider the reasons shown by the petitioner for not preferring the appeal within three months which is the prescribed period of limitation. We hold and declare that the appeal which was presented on 26.04.2024 is well within the further period of one month as envisaged under sub-section 4 of Section 107 of the CGST/BGST Act

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Rishi/-

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