



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO.204 OF 2023**

Savita Oil Technologies Ltd. .. Petitioner  
Versus  
The Union of India & Ors. .. Respondents

**ALONG WITH  
WRIT PETITION (L) NO.37372 OF 2022**

Savita Polymers Ltd. .. Petitioner  
Versus  
The Union of India & Ors. .. Respondents

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Mr.Jas Sanghavi a/w Ms.Revati S. Nansi i/by PDS Legal for the  
Petitioners.  
Mr.Satyaprakash Sharma for Respondent No.1.  
Ms.Jyoti Chavan, AGP for State in WP/204/23.  
Mr.Himanshu Takke, AGP for State in WPL/37372/22.

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**CORAM : G.S. KULKARNI &  
JITENDRA JAIN, JJ.**

**DATE : 18<sup>th</sup> July 2023**

**P.C.:-**

. These are two petitions praying for similar reliefs.  
Illustratively we note the prayer as made in the first petition which reads  
thus :-

*“(a) This Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.4 or Respondent No.7 to forthwith accept and admit the appeals sought to be filed by the petitioners against the Intimations for*

*concluding proceedings dated 17<sup>th</sup> May 2022 either manually or electronically and without insisting upon an application seeking condonation of delay in filing the said appeals.”*

2. These petitions were earlier listed before a Coordinate Bench of this Court on 27<sup>th</sup> April 2023 when their Lordships considering the issues as involved, were pleased to pass the following order :-

*“ . These petitions are based on the peculiar facts and circumstances inasmuch as the Petitioners who are desirous of filing an appeal is not permitted to do so by the Respondents in view of the lacuna in the software. Therefore, these petitions are being adjourned from 7 February 2023 for that purpose. The petitions were taken on board on 8 March 2023, 10 March 2023, 17 March 2023 and 6 April 2023. In Writ Petition No. 204 of 2023, on 10 March 2023, the following order was passed :-*

*“ . It is four weeks ago that we had directed the Respondents to inform the Petitioner whether the Petitioner can file an Appeal or not, and if yes, to which authority. Till date, the Respondents have neither informed the Petitioner nor there is any clarity emerging from the instructions given by the officers to the learned AGP. Some communication is issued to the Petitioner pursuant to the order, but that does not refer to the query that was raised in the order dated 7 February 2023.*

*2. Learned AGP states that instructions will be taken as to how the issue can be reconciled. Stand over to 17 March 2023”.*

2. On 17 March 2023, the following order came to be passed :

*“ . Learned AGP states that instructions have been taken and it is not that there is any objection to the Petitioner filing an appeal per se, but the appeal cannot be lodged in view of the way the software has been structured.*

*2. Learned Counsel for the Petitioner states that if that is the position, the Respondent can accept the appeal of the Petitioner manually.*

*3. Learned AGP states that this position would be placed on record by way of an affidavit. We also expect the Respondent to indicate in the affidavit as to what is the solution to the issue at hand and not only to point the technical issues.*

4. *Stand over to 6 April 2023”.*

3. *Such a position cannot continue where the litigant wants to file a statutory appeal cannot do so only because of the technical lacuna. If the technical lacuna is not resolved, at least a temporary solution in respect of an individual case of permitting to file an appeal manually can be explored. This is particularly so, since there is no objection whatsoever against the Petitioners for filing an appeal such as limitation, jurisdiction etc.*

4. *While we defer the hearing for the Respondents to 6 June 2023, we direct that if the Respondents are not able to find out a solution to the situation by 15 May 2023, as a stopgap arrangement the Petitioners will be permitted to file an appeal manually, subject to further orders.”*

3. The grievance of the petitioners is for refusal on the part of respondent no.7 to accept and admit appeals sought to be filed by the petitioners under Section 107 of the Central Goods and Services Tax Act, 2017 (CGST Act).

4. We need not dwell into the factual details, suffice it to observe that the petitioners are aggrieved by intimations in question dated 17<sup>th</sup>/18<sup>th</sup> May 2022 which are issued to the petitioners in Form GST DRC-05. The petitioners have already deposited the disputed tax under protest and to that effect, the challans have already been issued to the petitioners. When the petitioners intended to file an appeal assailing such intimations by electronic means that is by using electronic portal, the petitioners could not file the same as the electronic portal did not have a window/provision for an appeal to be filed in such cases. The petitioners

accordingly approached respondent no.7 seeking permission to file an appeal manually, however, respondent no.7 did not accept manual filing of the appeals on the ground that appeals are required to be filed by using electronic portal.

5. In the above circumstances, the petitioners have approached this Court to contend that intimation issued in Form GST DRC-05 by the adjudicating authority itself is an appealable order as the CGST Act would clearly provide. It is therefore, contended that as the portal is not allowing filing of appeal, it will render the remedy of an appeal illusory. It is the petitioners' contention that this would amount to arbitrariness in making an incorrect interpretation of the provision of Section 107 of the CGST Act which would be available to the petitioners.

6. Mr.Sanghavi, learned counsel for the petitioners submits that in these circumstances, appropriate orders are required to be passed to permit the petitioners to manually file an appeal for want of appropriate provision in the e-portal as operative by the Appellate Authority.

7. Ms.Chavan, learned Assistant Government Pleader for the Revenue would not dispute that the intimation dated 17<sup>th</sup> /18<sup>th</sup> May 2022

as received by the petitioners itself would be an appealable order. She has fairly stated that the portal, however, does not keep any window for such an appeal to be filed electronically.

8. Considering the rival contentions and having perused the provisions under Section 107 of the CGST Act, we are of the opinion that there is substance in the submissions as urged on behalf of the petitioners. The petitioners certainly have a legitimate right to file an appeal being aggrieved by intimations dated 17<sup>th</sup>/18<sup>th</sup> May 2022 issued in Form DRC-05 as noted above. Merely because electronic portal does not make a provision for filing of an appeal against an intimation issued in Form DRC-05, the petitioners cannot be faulted and for such technical reason, it cannot be countenanced that a statutory right of appeal available to the petitioners is rendered *otiose*.

9. In the above circumstances, till an appropriate provision is made for acceptance of such appeal electronically, the filing of such appeal is required to be permitted by the manual method.

10. We accordingly dispose of these petitions in terms of the following directions :-

- (i) Respondent No.7 is directed to accept an appeal of the petitioners, on the same being filed manually.
- (ii) As the petitioners were pursuing the present petitions bonafide, if the appeals are filed by the petitioners within a period of two weeks from today, the same be entertained and adjudicated in accordance with law and on its own merits, without an objection as to limitation.
- (iii) Disposed of in above terms. No costs.

***JITENDRA JAIN, J.***

***G.S. KULKARNI, J.***