

Court No. - 8

Case :- WRIT TAX No. - 199 of 2023

Petitioner :- M/S Ram Construction Co. Lucknow Thru. Proprietor Mr. Arvind Kumar Singh Yadav

Respondent :- Union Of India Thru. Secy. Ministry Of Finance, New Delhi And 2 Others

Counsel for Petitioner :- Anand Dubey

Counsel for Respondent :- A.S.G.I., Dipak Seth, Manish Misra

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner and Shri Manish Mishra, learned counsel appearing for respondent no.2. Shri Ambrish Rai, learned counsel is also present on behalf of respondent no.1/Union of India.

2. Present petition has been filed by the petitioner challenging order dated 09.05.2018 passed by respondent no.3 whereby the duty on account of non-payment of service tax has been assessed and was directed to be paid alongwith interest and penalty as well as order dated 25.04.2023 whereby the appeal preferred by the petitioner has been dismissed.

3. Contention of learned counsel for the petitioner is that the petitioner had changed its address of service, as such, the petitioner was never served either with the show-cause notice or the order in original passed against him on 09.05.2018. It is argued that when the accounts of the petitioner were seized in execution proceedings, the Accountant of the petitioner went to the office of the respondents and then he came to know that an order has been passed, as such, the petitioner preferred an appeal under Section 86 of the Finance Act, 1994. In the appeal, it was specifically stated that the order appealed against was communicated to the petitioner on 31.08.2022. The appellate Court recorded the said submissions, however, proceeded to dismiss the appeal by holding that the order was passed on 09.05.2018 and was sent through speed post, which normally takes a few days, and thus, he did not accept the version of the petitioner that the order was actually received on 31.08.2022.

4. Learned counsel for the petitioner argues that by virtue of Section 83 of the Finance Act, 1994, certain provisions of the Central Excise Act were incorporated, including Section 37C of the Central Excise Act, which provides for the manner of service of decisions, orders, summons etc. In the light of the said, he argues that by virtue of Section 37C(1)(a) of the Central Excise Act, although it is provided that the service is to

be effected by registered post, however, by virtue of the provisions of General Clauses Act, although there is a presumption of service under registered cover, the same is a rebuttable presumption and as the petitioner had stated that actually the order was served upon the petitioner on 31.08.2022, the petitioner had reasonable ground to rebut the presumption of service of notice or order, more so, as the petitioner had changed its address.

5. Even otherwise, the order passed against the petitioner is bad in law as the services rendered by the petitioner were exempted by virtue of a notification issued and if the petitioner was served with a show-cause notice, he could have demonstrated that the services rendered by the petitioner were exempted.

6. Learned counsel for the respondent, on the other hand, argues that by virtue of Section 86 of the Finance Act, 1994, an appeal lies to the Tribunal against the order passed in appeal, as such, the present writ petition would not lie and all the arguments raised by the petitioner herein can be well agitated by filing an appropriate appeal before the Tribunal.

7. In rejoinder, counsel for the petitioner argues that in the order impugned passed in appeal as the appellate Court has observed that the delay can be condoned only in exercise of powers under Article 226 and Article 142 of the Constitution of India, thus, the petitioner has approached this Court.

8. Considering the submissions made at the Bar, I am not inclined to entertain the writ petition in view of the alternative remedy as the grounds raised by the petitioner can be well agitated before the Tribunal by filing an appropriate appeal under Section 86 of the Finance Act, 1994.

9. The writ petition is accordingly **dismissed** giving liberty to the petitioner to file an appeal before the Tribunal in accordance with law.

10. The record summoned is being returned back to counsel for the respondents.

Order Date :- 18.10.2023

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