

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.17 of 2025

Sri Mrinal Kanti Saha, S/o Lt. Mohan Lal Saha, Vill-Rajnagar, Road No.4,
P.O/Mouja- Teliamura, N/P- Teliamura, Khowai, Tripura-799205

.....Petitioner(s);

Versus

1. Commissioner (Appeals), CGST, Central Excise and Customs, 3rd Floor,
GST Bhawan, Kedar Road, Machkhowa, Guwahati-781001

2. Assistant Commissioner, Central Goods & Services Tax, Tripura Division-II,
Agartala, 3rd Floor, Jackson Gate Building, Lenin Sarani, Agartala-799001

3. Assistant Commissioner (TAR), CGST, Agartala, Netaji Chowmohani,
Mantribari Road, Agartala-799901

.....Respondent(s).

For Petitioner(s) : Mr. Vinoy Shroff, Advocate,
Mr. Arjun Acharjee, Advocate.

For Respondent(s) : Mr. Paramartha Datta, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Order

20/02/2025

Heard Mr. Vinoy Shroff, learned counsel assisted by Mr. Arjun Acharjee, learned counsel for the petitioner and Mr. Paramartha Datta, learned counsel for the respondents-revenue.

2. Petitioner has approached this Court on issuance of recovery notice dated 03.05.2024 [Annexure-G] followed by the last impugned notice dated 11.12.2024 [Annexure-L] in pursuance to the demand of tax, penalty and interest confirmed by order in original dated 03.02.2022 [Annexure-D] reportedly affirmed in appeal vide order dated 17.05.2023. Petitioner, in the present writ petition, has alleged that the order in appeal was never communicated to him. On inquiries from the Office of the Commissioner (Appeals), he has been communicated through letter dated 23.09.2024 [Annexure-J] that the order in appeal dated 17.05.2023 was dispatched to his

registered address on 19.05.2023 bearing the tracking ID ES998452925IN. A photocopy of the speed post cover was also annexed to this letter as a proof of dispatch of the copy of order in original. However, petitioner on his part has enclosed a track consignment report from the India Post in respect of the same consignment number which, according to him, indicates “Consignment details not found”.

3. Mr. Vinoy Shroff, learned counsel for the petitioner, submits that petitioner is, therefore, left in the lurch as to how to prefer an appeal against an order which has never been communicated. Meanwhile, since recovery proceedings have been initiated, he has been compelled to approach this Court in writ jurisdiction.

4. Mr. Paramartha Datta, learned counsel for the respondents-revenue, submits on instruction that the copy of the order in appeal has been communicated to him through speed post. Petitioner is denying the receipt thereof in order to ward off the huge delay caused in preferring an appeal against it before the learned Customs, Excise and Service Tax Appellate Tribunal (CESTAT, *for short*). Therefore, the recovery proceedings initiated on confirmation of the order in original by the Commissioner (Appeals) does not require interference. He further submits that petitioner has also bypassed an alternative remedy of appeal under Section 86 of the Finance Act, 1994 before the learned CESTAT within the time prescribed.

5. On consideration of the rival submission of the parties, we are of the opinion that the issue relating to communication of the order in appeal is a question of fact which this Court in writ jurisdiction is not required to venture

into since there is a forum of appeal before learned CESTAT under Section 86 of the Finance Act, 1994. But the petitioner asserts that the order in appeal being not with him, he is not in a position to prefer an appeal before the learned CESTAT. In those circumstances, we deem it proper to direct the petitioner to approach the office of the learned Commissioner (Appeals) at Guwahati within a period of two weeks on any working day.

5.1. Learned counsel for the respondents-revenue assures that the moment the petitioner or his representative appears before the office of learned Commissioner (Appeals), the copy of order in appeal dated 17.05.2023 would be supplied to him. However such supply of the copy of the order in appeal would not preclude the respondents-revenue from raising the plea of limitation in any appeal to be preferred by the writ petitioner before the learned CESTAT which may be left open to be decided on its own merits.

5.2. Learned counsel for the petitioner submits that two weeks' more time may be allowed thereafter to prefer an appeal before the learned CESTAT taking all grounds of law and fact also on the question of delay before the learned CESTAT as available in law.

6. Petitioner is at liberty to approach the learned CESTAT. The writ petition is accordingly disposed of without getting into merits of the contention of the parties. In case such an appeal is preferred before the learned CESTAT within a period of two weeks, the learned CESTAT would consider the question of delay on its own merits. Let it be made clear that this court has not expressed any opinion on the merits of the case of the parties.

(BISWAJIT PALIT), J

(APARESH KUMAR SINGH), CJ