IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
*****

Writ Petition No.22947 of 2017

Between

Ch.Ramakotaiah, S/o CVPN Sarma,
Aged about 55 years, Occ: Business,
R/o D.No.50-22-11, Varapurna Nilayam,
TPT Colony, Seethammadhara,
Visakhapatnam-530 013, Andhra Pradesh

… Petitioner

and

1. The Assistant Commissioner,
   Central Excise & Service Tax, Div-IB (Ser. Tax),
   4th Floor, D.No.10-5—22, Opp. Lane to HSBC,
   Siripuram, Visakhapatnam-530 003

2. The Addl. Commissioner, O/o the Commissioner
   of Customs, Central Excise & Service Tax,
   Visakhapatnam-I, Commissionerate,
   Central Excise Bldg., Port Area, Visakhapatnam-35

… Respondents

DATE OF JUDGMENT PRONOUNCED: 02-8-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

1	Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No
2	Whether the copies of judgment may be marked to Law Reports/Journals	Yes/No
3	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	Yes/No

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ Writ Petition No.22947 of 2017

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Vs.

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Visakhapatnam-I, Commissionerate,
Central Excise Bldg., Port Area, Visakhapatnam-35

... Respondents

! Counsel for Petitioner : Mr. T.V.L. Narasimha Rao

Counsel for Respondents : Mr. B.Narayana Reddy,
Asst. Solicitor General

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

Writ Petition No.22947 of 2017

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging an Order-in-Original passed by the 2nd respondent, confirming a demand of Rs.20,41,386/- towards service tax payable by the petitioner in respect of a works contract undertaken by him for the period 2010-11.

2. Heard Mr. T.V.L. Narasimha Rao, learned counsel for the petitioner and Mr. B.Narayana Reddy, learned Assistant Solicitor General of India for the respondents.

3. The Order-in-Original, which is challenged by the petitioner, is actually dated 28-8-2013. The petitioner has come up with a challenge to the Order-in-Original dated 28-8-2013, only after the respondents issued a garnishee notice on 01-6-2017. The claim of the petitioner in the writ petition is that the Order-in-Original was never served on the petitioner and that therefore the petitioner was completely in the dark until a garnishee notice was served on the bank.

4. In view of the total denial of the service of the copy of the Order-in-Original on the part of the petitioner, this Court directed the learned Assistant Solicitor General on 12-7-2017 to produce proof to show whether the Order-in-Original was served on the petitioner or not. In response, the learned Assistant Solicitor General has produced the records to show

that the Order-in-Original was registered with the speed post counter on 16-9-2013. The receipt issued by the speed post counter on 16-9-2013 shows that the same was registered to the address of the petitioner. The printout of the online tracking system of India Post shows that the article was delivered on 17-9-2013 at 15:36 hours.

5. However, Mr. T.V.L. Narasimha Rao, learned counsel for the petitioner, contended that a printout of the speed post online tracking system was not sufficient to show service of the copy of the Order-in-Original on the petitioner, especially in the light of the mandatory requirement under Section 37C of the Central Excise Act, 1944. Section 37C was amended only by Act 17/2013 with effect from 10-5-2013 to include service through courier. Therefore, the learned counsel contended that as long as there is no acknowledgement of service of the Order-in-Original upon the petitioner, the requirements of Section 37C cannot be taken to have been complied with.

6. But we do not agree. The sworn Affidavit of the petitioner shows that he has participated in the proceedings before the Additional Commissioner throughout. The show cause notice dated 21-12-2012 was admittedly served on the petitioner and the petitioner attended personal hearing on 24-7-2013. The petitioner claims, in paragraph-4 of the Affidavit in support of the writ petition that he also submitted written submissions to the 2nd respondent on 24-7-2013. It is only

thereafter that the impugned Order-in-Original was passed on 28-8-2013.

7. It is too hard to believe that a person who participated in the personal hearing on 24-7-2013 and submitted written arguments on the same date, got into a sense of false security as though no Order-in-Original could have been passed for four years thereafter.

8. The contention that service of an Order-in-Original is a mandatory requirement under Section 37C of the Central Excise Act, 1944, does not take the case of the petitioner anywhere. As a matter of fact, a similar contention was raised before a Bench of this Court in *Rishabh Polymers (P) Ltd. v. Designated Authority/Commissioner of Central Excise, Hyderabad* in W.P.M.P.No.53572 of 2016 in W.P.No.5977 of 1999. But by an order dated 07-4-2017, the Bench rejected the contention raised therein.

9. In fact in the said case, the petitioner before the Bench sought a review of an earlier judgment on the basis of Section 37C and also on the basis of 3 decisions of the Supreme Court. But the contention was repealed by a Bench, to which one of us (*VRS, J.*) was a party.

10. The reach of Section 37C cannot be extended to such an extent that unless an acknowledgement card containing the signature of the assessee is produced, the service of the Order-in-Original upon the assessee cannot be treated as completed. Once a registered letter or a speed post is proved to have been

submitted at the post office and the necessary registration fee or speed post fee paid therein, a presumption would normally arise that in due course, the said registered letter reached the addressee in 48/72 hours. The online tracking system provided by India Post is nothing but a proof of such delivery in an electronic form. Once the website of the India Post shows that the article sent by the Department was delivered to the addressee, the burden of proving that the Order-in-Original was served on the assessee, is discharged by the Revenue. Thereafter, the burden shifts to the assessee to show that despite the entry in the online tracking system, they did not receive the copy of the order.

11. In this regard, it will be relevant to take note of Section 27 of the General Clauses Act, 1897, which reads as follows:

> "**27. Meaning of service by post.**—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

12. By producing the printout of the online tracking system, the Revenue has proved in this case that they addressed, pre-paid and posted by registered speed post, the letter containing the Order-in-Original. Once these

requirements of Section 27 of the General Clauses Act, 1897, are satisfied, the requirements of Section 37C of the Central Excise Act, 1944, would also stand satisfied.

13. In view of the above, we do not accept that the petitioner was ignorant of the order. Hence, the writ petition fails and is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

02nd August, 2017.
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Note:-
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

<u>Writ Petition No.22947 of 2017</u>
(per VRS, J.)

02nd August, 2017.
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