

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

93 WRIT PETITION NO.10496 OF 2018

MS BHARATI FABRICATORS THROUGH ITS PROPRIETOR SHRI
GORAKSHNATH PUNAJA CHAVAN
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY MINISTRY OF INANCE
NEW DELHI

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Advocate for Petitioner : Mr. Alok Sharma h/f. Indani Radheshyam S.
Advocate for Respondents/UOI : Mr. Deshpande Sanjeev B.
Advocate for Respondents : Mr. Ladda Dwarkadas S. for R/2 & 3
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**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.**
DATE : 20.08.2019

PC. :-

Mr. Sharma the learned counsel submits that though the petitioner is challenging the order in original passed in the year 2012 in OIO No. 91/S.T./A.C./2012 the copy of the said order is not available to the petitioner. The same was never served upon the petitioner at any point of time. Prior to the amendment in the year 2013 Section 37-C of the Central Excise Act mandated the copy of the order to be served by R.P.A.D. Even the respondent in the affidavit has admitted that it does not possess any acknowledgment of the service of order on the petitioner. According to the

learned advocate, the petitioner has also applied for the certified copy of the order in original the same has not been issued as yet to the petitioner. For the first time the petitioner came to know about the order in original after the bank accounts of the petitioner were attached. The petitioner has paid the original amount of the service tax.

2. Mr. Ladda the learned counsel for the respondent submits that the petitioner is served with the order in original by speed post, however at present the acknowledgment is not traceable. According to the learned counsel, the order in original is passed after considering the say put-forth by the petitioner. The learned counsel submits that the petitioner has a remedy of appeal.

3. We cannot set aside any order without the copy of the said order before us. In fact the Registry should not have registered the petition without the copy of the order sought to be challenged in the writ petition.

4. Without considering the pros and cons of the order impugned in the petition it will be inappropriate and not in tune with the propriety to pass any orders.

5. Mr. Ladda the learned counsel submits that after the present writ

petition is filed he has been given the copy of the order in original that is sought to be impugned in the present writ petition. He shall give the copy of the said order to the learned counsel for the petitioner. The respondents are also directed to issue certified copy to the petitioner of the order in original dated 31.10.2012 as it is submitted that the petitioner has already filed an application for the certified copy of the said order. The said certified copy shall be issued to the petitioner within 15 days from today.

6. Upon receipt of the certified copy the petitioner may file an appeal against the said order if so advised before the appropriate forum. The appropriate forum shall naturally consider about the claim of the petitioner that the order in original was not served upon the petitioner and thereafter shall pass the necessary orders.

7. The learned counsel for the petitioner requests for releasing the bank account sealed by the respondents. As we have relegated the matter before the appellate authority, the petitioner may make an application to the appellate authority for release of the bank account. The appellate authority shall within 15 days of the receipt of the application pass appropriate orders on the same.

8. With the aforesaid observations the writ petition stands disposed of. It is made clear we have not considered the contention of the respective parties on merits. The same are kept open. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]