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ORDER SHEET

WPO 185 of 2021
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

SURFACE COMMERCIAL PRIVATE LIMITED & ANR.
VS
UNION OF INDIA & ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date: 22nd April, 2021.

(Via Video Conference)

Mr. Rudrajit Sarkar,
Mr. Debangshu Dinda, Advs.
...for petitioners
Mr. Smarajit Roy Chowdhury,
Mr. Manabendra Bandyopadhyay, Advs.
...for the respondents

The Court: Upon hearing learned counsel appearing on behalf of the parties, it appears that the scope of the writ petition is limited.

At the outset, learned counsel appearing for the respondent Authorities contends that the matter does not pertain to Group-IX of the classification of Writs but is a revenue matter. However, in view of the innocuous nature of the order proposed to be passed, the matter is not being relegated to the regular Bench, which will unnecessarily prolong the proceeding on technical ground.

The petitioners contend that the Income-tax Authorities, without service of a notice in accordance with law at the proper address of the petitioners, initiated a proceeding under Section 200 of the Code of Criminal Procedure on charges as contemplated in Sections 276CC and 278P of the Income-tax Act, 1961. Learned counsel places reliance on communications made by the Authorities themselves, which initially indicated that notice was served at a wrong address but subsequently sought to rectify such admission by contending that the notice was affixed at the proper address. The petitioners' grievance is that, pursuant to such faulty service of notice, the Metropolitan Magistrate before whom the matter was pending erroneously proceeded and passed an order of attachment.

The petitioners have already given a representation in that regard to the Income-tax Authorities, which is annexed at page 32 of the writ petition. However, no action was taken by the Authorities on such representation to consider the above grievance.

Learned counsel appearing for the respondent /Income-tax Authorities denies the allegation that notice was not served at the proper address of the petitioners.

Be that as it may, since the dispute involved requires factual appreciation and production of relevant material evidence, which have to be assessed to come to a finding, the Writ Court is not the proper forum to decide such an issue, that too, at this belated stage after an attachment order has been passed by the Magistrate.

Accordingly, WPO 185 of 2021 is disposed of by directing respondent nos. 2,3 and 5 to consider and decide on the representation/notice for demand of justice of the petitioners, annexed at page 32 of the writ petition, and communicate their decision to the petitioners. The entire process ought to be completed within a month from date. However, liberty is granted to the petitioners to approach the appropriate Criminal forum, challenging the proceedings and the orders passed by the Metropolitan Magistrate in CS Case No. 7959 of 1990 passed on a complaint under Section 200 of the

Code of Criminal Procedure. If such a challenge is preferred, the appropriate Authority shall consider the same in accordance with law without being prejudiced in any manner by any of the observations made herein. There will be no order as to costs.

Urgent certified copy of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(SABYASACHI BHATTACHARYYA, J.)

TR/