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WP Nos. 34308 & 34309 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.06.2022

Coram:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition Nos. 34308 & 34309 of 2004
and
W.P.M.P.Nos.41437 & 41439 of 2004

M/s. Lalchand Bhimraj
rep. by its partner
Mr.Vimal Chand Bhandari
No.106 (Old No.11) Nyniappa Naick Street,
Chennai – 600 003.

.. Petitioner in both
the Writ Petitions

Versus

1.The Customs, Excise and Service Tax Appellate Tribunal
South Zone Bench, Shastri Bhavan – Annexure
1st Floor, No.26, Haddows Road,
Chennai – 600 006.

2.The Commissioner of Customs (Appeals),
No.33, Rajaji Salai, Customs House,
Chennai – 600 001.

3.Deputy Commissioner of Customs (Gr-7A-DPEB),
Office of the Commissioner of Customs,
No.33, Rajaji Salai, Customs House,
Chennai – 600 001.

4.Assistant Commissioner of Customs (Gr-7A),
Office of the Commissioner of Customs,
No.33, Rajaji Salai, Customs House
Chennai – 600 001.

..Respondents in both
the Writ Petitions



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Petitions filed under Article 226 of the Constitution of India praying for a issuance of writ of Certiorari calling for the records of the respondents culminating in order dated 11.10.2004, bearing Nos.940 & 939 of 2004 in Appeal No.C/84 of 2002 & C/83 of 2002 passed by the first respondent and quash the same.

For Petitioner : Mr. J. Sivanandaraaj
in both the Writ Petitions

For Respondents : Mr. T. Pramod Kumar Chopda
Senior Standing Counsel
in both the Writ Petitions

COMMON ORDER

R. MAHADEVAN, J.

The relief sought in these writ petitions is to issue a Writ of Certiorari calling for the records from the file of the first respondent, pertaining to the Final order Nos.940 & 939 of 2004 dated 11.10.2004, in Appeal Nos.C/84/2002 & C/83/2002 and quash the same.

2. The brief facts of the case are as follows:

2.1. The petitioner firm has imported three consignments of ascorbic acid to be used in the manufacture of medicines vide bills of entry bearing Nos.14797 dated 26.05.2000, 12032 dated 04.05.2000 & 25633 dated 28.08.2000. The said imported consignments were subjected to customs duty,



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which was paid by the petitioner on 01.06.2000, 09.05.2000 & 04.09.2000 respectively. On payment of duty by the petitioner, the goods were released.

However, they were issued with notices under Section 28(1) of the Customs Act, 1962 (hereinafter referred to as 'the Act') by the fourth respondent. In response to the same, the petitioner sent replies vide letters dated 12.12.2000, 24.11.2000 and 11.04.2001 stating that as per Section 28 of the Act, show cause notices for non-levy of anti dumping duty, must be served on the person chargeable with such duty, within the statutory time limit of six months, from the date of payment of duty, whereas, the demand notices were served on the petitioner, beyond the period prescribed and hence, the same are barred by limitation.

2.2. Notwithstanding the objections raised by the petitioner for the demand notices, the third respondent passed orders dated 15.10.2001, 15.10.2001 and 28.09.2001 confirming the demand of Rs.1,68,531/- Rs.10,56,064/- and Rs.43,58,637/-, after having held that the Demand Notices were served on the petitioner within the period of limitation. The petitioner was also directed to pay the amount as demanded by the fourth respondent towards anti-dumping duty under Section 28 of the Act.

2.3. Aggrieved by the orders passed by the third respondent, the petitioner preferred appeals in Appeal Nos.33, 34 & 35 of 2002 before the



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second respondent, who rejected the same as devoid of merits on 28.01.2002.

Challenging the same, the petitioner went on further appeals in Appeal Nos.82, 83 & 84 of 2002 before the Customs, Excise and Service Tax Appellate Tribunal (for brevity, 'the CESTAT'). By the common order dated 11.10.2004, the CESTAT allowed Appeal No.82 of 2002 relating to Bill of Entry No.14797 and dismissed the other two appeals. Challenging the said common order passed by the CESTAT in Appeal Nos. 83 and 84 of 2002, the petitioner has come up with these two writ petitions for the relief stated *supra*.

3.1. Mr.J.Sivanandaraaj, learned counsel for the petitioner submitted that as per Section 28 of the Act, a show cause notice for non-levy of anti dumping duty has to be served on the person chargeable with such duty within the statutory time limit of six months from the date of payment of duty. But in the present case, such notices were served on the petitioner only after the expiry of the period of limitation and therefore, the demand notices issued by the fourth respondent are barred by limitation. The learned counsel further submitted that in respect of 3rd Bill of Entry bearing no.25633 dated 28.08.2000, the show cause notice issued by the fourth respondent was returned unserved since the petitioner was not in station. In such circumstances, as per Section 153 of the Act, the fourth respondent ought to



have affixed the unserved notice on the notice board of the Customs House, but, it was not done. In respect of the 2nd Bill of Entry bearing no.12032 dated 04.05.2000, show cause notice was sent to the wrong address and not to the petitioner's correct address. Therefore, Section 27 of the General Clauses Act, 1897 would not apply to this case.

3.2. By referring to Section 28 (1) and (3) of the Act, the learned counsel for the petitioner would contend that the notices in dispute ought to have been served within six months from the relevant date. According to the learned counsel, the term 'relevant date' is defined in Section 28 (3) (d) of the Act as the date of payment of duty or interest i.e., the date on which customs duty or interest was paid by the petitioner. Adding further, the learned counsel submitted that the term "serve" has no specific definition either in the Customs Act or in the General Clauses Act and therefore, if the meaning as provided in the Oxford's Dictionary & Thesaurus is taken note of, the word "serve" is defined to mean "deliver". Therefore, the word "serve" or "service" of any kind of document would imply the actual delivery of such document at the hands of the concerned addressee or recipient and not the date on which it was booked in the post office for being served.

3.3. In support of his contentions, the learned counsel for the petitioner placed reliance on the following decisions (i)*State of H.P. v. Pawan*



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Kumar [(2005) 4 SCC 350], wherein, it was held by the Hon'ble Supreme Court that “*statutory provisions must be given their plain and literal meaning and when two interpretations are possible*”; (ii) **Ambalal Morarji Soni v. Union of India [AIR 1972 Guj 126]**, wherein, it was held by the Gujarat High Court that “*merely dispatching the notice to the intended person's address does not complete service of notice. Further, if the notice was not received by the concerned person, the proper mode would be for the authorities to serve the notice by affixing the same on their notice board*”; (iii) **Vadilal Industries Ltd v. Union of India [(2006) 197 ELT 160]**, in which, the High Court of Gujarat at Ahmedabad, has held that “*where the alternative methods of service prescribed in section 37C of the Central Excise Act, 1944 were not followed upon failure of service by post, the averment made on oath by the assessee that a copy of the order was not served on the assessee remained unrebutted*” ; (iv) **Saral Wire Craft Pvt. Ltd v. Commissioner of Customs [(2015) 14 SCC 523]**, in which, it was held by the Hon'ble Supreme Court that “*departmental authorities must meticulously follow and obey the mandate enshrined under the statute*” and further observed that “*it is a basic principle of law to abide by the act prescribed under such statutes*”. Referring to those decisions, the learned counsel submitted that the fourth respondent failed to follow the procedure laid down under the Act in respect of service of demand notices and



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the notices were served on the petitioner beyond the period of limitation and hence, the same are clearly barred by limitation. However, without considering the said aspect in a proper perspective, the CESTAT erred in relying on the decisions of the Kerala High Court in *Ambali Karthikeyan v. Collector of Customs & Central Excise [(2000) 125 ELT 50]* and the Madras High Court in *P.Bhoormal Tirupati v. Additional Collector of Customs [AIR 1974 Mad 224]*, which are not applicable to the facts of the present case, and dismissed the appeals filed by the petitioner in respect to two bill of entries dated 04.05.2000 and 28.08.2000. Thus, the learned counsel sought to allow these writ petitions by quashing the order impugned herein.

4. On the other hand, Mr. T. Pramod Kumar Chopda, learned Senior Standing Counsel appearing for the respondents submitted that in respect of 2nd Bill of Entry bearing no. 12032 dated 04.05.2000 as well as 3rd Bill of Entry bearing no. 25633 dated 28.08.2000, as per the provisions of Section 28 & Section 153 of the Act, demand notices were despatched to the address of the petitioner through Registered post on 07.11.2000 and 12.02.2001 respectively, i.e., well within the six months from the date of payment of duty and there is no delay in serving the notices on the petitioner. In support of his contention, he has relied on the decision of this Court in the case of *Sha Moolchand*



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Praopchandji Gandhi vs. C.C.(Airport), Chennai reported in 2003 SCC

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Online Mad 1078, wherein, it was held by this Court that despatch of notice within a period of six months would be sufficient compliance of the requirement of the Customs Act, 1962. The learned counsel also submitted that Section 27 of the General Clauses Act clearly states that where any Central Act requires any document to be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing prepaying 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. Pointing out the same, the learned Senior Standing Counsel submitted that the notices were despatched by the fourth respondent well within the period of limitation to expire. The learned Senior Standing Counsel therefore prayed this Court to dismiss the writ petitions as devoid of merits.

5. We have heard the learned counsel for the writ petitioner as well as the learned Senior Standing Counsel for the respondents and also perused the materials available on record.



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6. At the outset, it is to be pointed out that the petitioner preferred three appeals in respect of three bill of entries viz., No.14797 dated 26.05.2000, No.12032 dated 04.05.2000 and No.25633 dated 28.08.2000, before the CESTAT. Upon hearing the arguments on both sides, the CESTAT allowed the appeal bearing No.C/82/2002 in respect of bill of entry no.14797, by the very same order dated 11.10.2004, against which, the Revenue filed an appeal in CMA.No.3193 of 2005; and the said appeal was dismissed, by judgment dated 14.06.2013. Therefore, the petitioner filed the present writ petitions, challenging the order of the CESTAT focussing only in respect of the dismissal of the other two appeals. In view of the same, this court need not be gone into the judgment passed in CMA.No.3193 of 2005, though the learned counsel for the petitioner placed reliance on the same.

7. Now, the issue involved in these writ petitions from the pleadings made by the parties, is, whether the show cause notices dated 06.11.2000 and 08.02.2001 for short collection of duty due to non-levy of anti-dumping duty, in respect to two bill of entries bearing nos.12032 and 25633 dated 04.05.2000 and 28.08.2000 respectively, issued by the fourth respondent in terms of section 28(1) of the Customs Act, 1962, are barred by limitation?



8. Before proceeding further, it would be relevant to refer to Section 28, which deals with the recovery of duty and Section 153, which deals with the modes of service of notice, order, etc. The said provisions read as under:

“28. Recovery of [duties not levied or not paid or short-levied or short-paid] or erroneously refunded. — (1) Where any [duty has not been levied or not paid or short-levied or short-paid] or erroneously refunded, or any interest payable has not been paid, part-paid or erroneously refunded, for any reason other than the reasons of collusion or any wilful mis-statement or suppression of facts, —

(a) the proper officer shall, within 6 [two years] from the relevant date, serve notice on the person chargeable with the duty or interest which has not been so levied [or paid] or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

(b) the person chargeable with the duty or interest, may pay before service of notice under clause (a) on the basis of, —

(i) his own ascertainment of such duty; or

(ii) the duty ascertained by the proper officer, the amount of duty along with the interest payable thereon under section 28AA or the amount of interest which has not been so paid or part-paid.”

“153. Modes for service of notice order, etc. — (1) An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes, namely:

(a) by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;

(b) by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;

(c) by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;

(d) by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or (e) by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any. (2)

Every order, decision, summons, notice or any communication shall be



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deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded in the manner provided in sub-section (1). (3) When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

The cumulative reading of the aforesaid provisions of law makes it clear that the show cause notices for non-levy of anti dumping duty, shall be served on the person chargeable with the duty, within the statutory time limit of six months, from the date of payment of duty. Such notices shall be served by sending it by registered post to the person for whom it is intended or to his agent; or if the same cannot be served in the said manner, the same shall be affixed on the notice board of the customs house.

9. In the present case, there is no dispute with regard to the date of payment of duty and the date of expiry of limitation in respect of the aforesaid two bill of entries. It is also not in dispute that the notices under section 28(1) of the Act were issued/despached within the limitation period. What was disputed is that the delivery of notices to the petitioner, was beyond the period of limitation. The details of the same read as under:

Bill of Entry	Date of Payment of Duty	Date of expiry of limitation	Date of dispatch of notice	Date of delivery of notice
12032 dated 04.05.2000	09.05.2000	09.11.2000	08.11.2000	10.11.2000
25633 dated 28.08.2000	04.09.2000	04.03.2001	13.02.2001	Post returned on 28.02.2001 as per endorsement made by the postal department and notice was handed over to the petitioner in person on 03.04.2001.

10. According to the petitioner, notices dated 06.11.2000 and 08.02.2001



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issued in respect of 2nd and 3rd bill of entries, were not served within six months from the relevant date and hence, the same are barred by limitation and the demand of duty made thereunder consequently, fails. On the other hand, it is the submission of the respondents that the date of reckoning for the purposes of limitation must be the date on which the notices were despatched by the respondents and not the date of receipt by the petitioner.

11. On a perusal of the documents enclosed in the typed set of papers, it could be seen that the notice dated 06.11.2000 in respect of bill of entry no.12032 dated 04.05.2000, was sent to the wrong address of the petitioner, but it was delivered to them, on 10.11.2000 i.e., one day after the expiry of the limitation period and hence, the service of notice on the petitioner was completed. Similarly, in respect of bill of entry no.25633 dated 28.08.2000, the notice was initially issued on 13.02.2001 and the same was returned on 28.02.2001 as the party was not in station, which is well within the limitation period and the same fact was also fairly conceded by the petitioner. Subsequently, the petitioner was called to appear in person before the customs authorities and the notice was served on them by hand on 03.04.2001. In such circumstances, the service of notice effected on the petitioner at the first instance itself, would be deemed to be completed service and hence, the



question of affixing the notice in the notice board of the customs house, will not arise. Therefore, this court is of the view that if the date of despatch of notices is taken into consideration, the notices served on the petitioner are within the period of limitation.

12. Accordingly, the CESTAT, on appreciation of the factual aspects involved in these cases, rightly held that the show cause notices dated 06.11.2000 and 08.02.2001 were issued well within the period of limitation and ultimately, dismissed the appeals filed by the petitioners. The findings of the CESTAT are quoted below for ready reference:

“6. After examining the rival arguments, we find that, in terms of Section 153, it was enough for the Department to serve a demand notice on the assessee by sending it by Registered Post to them. In the case of Ambali Karthikeyan, it has been held by the High Court that the date of despatch of notice by Registered Post and not the date of receipt of the despatch by the addressee is material for the purpose of Section 110(2). It was so held by reference to Section 153 of the Customs Act. As Counsel has sought to distinguish the provisions of Section 110(2) from those of Section 28(1) we shall examine the provisions. Section 110(2) reads as follows:

“Where any goods are seized under sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months on the seizure of the goods, the goods shall be returned to the person from whose possession they were seized.”

The above provision speaks of notice being given under Section 124(a) within six months. The corresponding expression used in Section 28(1) of the Customs Act is 'serve'. This provision of law requires a demand notice to be served on the person chargeable with duty. According to Id. SDR, there is hardly any difference between 'give' (as used under Section 28(1) of the Act). This argument is based on Section 27 of the General Clauses Act, 1897. We also note that Section 27 of the General Clause Act treats the expressions 'serve' and 'give' in identical manner. This provision reads as under:



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“Where any Central Act or Regulation made after the commencement of this Act authorises 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, prepaying, 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.” (emphasis added).

As 'serve' and 'give' are treated alike, Ambali Karthikeyan case cannot be held inapplicable to the instant case. It is also noticed that in the case of Bhoormal Vs. Additional Collector of Customs (Supra), the Madras High Court has held that receipt of notice by addressee is not required for effective service in terms of Section 153 of the Customs Act. Following the rulings of the High Courts, we hold that the demand notice pertaining to Bill of Entry No.12032, which was despatched by Registered Post on 07.11.2000, was served within the period of limitation prescribed under Section 28(1) of the Customs Act. In the result, the assessee's challenge in Appeal No.C/83/2002 fails. The appeal stands dismissed.

7. The situation in Appeal No.C/84/2002 is worse for the appellants. The date of payment of duty in this case is 04.09.2000 and the date of despatch of demand notice by Registered Post is 12.02.2001. The period of limitation expired on 04.03.2001. According to the appellants, the demand notice was personally served on them only on 03.04.2001. We find that admittedly the demand notice despatched by Registered Post on 12.02.2001 could not be served on the noticee on account of his being out of station. The notice was returned by the postal authorities stating that the party was not in station, whereupon a second notice was served on the appellants on 03.04.2001. Obviously, it was on account of the addressee not being in station that the first notice could not be delivered to them, and not due to any fault of the Postal or Customs authorities. Had the noticee, been in station, the demand notice despatched on 12.02.2001 would have been delivered to them in the ordinary course of post well before 04.03.2001. In any view of the matter, the demand notice shall be deemed to have been served on the appellants within the period of limitation in terms of Section 153 of the Customs Act read with Section 27 of the General Clauses Act and as per the aforesaid rulings of the Kerala and Madras High Courts. In the result, Appeal No.C/84/2002 gets rejected.”

13.Though the learned counsel for the petitioner cited several case laws,



to substantiate his stand that the date of delivery of notice to the petitioner is taken into consideration for the purpose of calculating the limitation period, this court is not inclined to accept the same, as it is now settled that the date of despatch of notice alone, will be taken into account for limitation. In this context, it would be relevant to refer to the doctrine of 'substantial compliance' to the facts and circumstances of the case. In the decision of the Hon'ble Supreme Court in ***Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others [(2011) 1 SCC 236]***, it was held as follows:

“Doctrine of substantial compliance and “intended use”

32. *The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted on some minor or in consequent aspects which cannot be described as the “essence” or the “substance” of the requirements. Like the concept of “reasonableness”, the acceptance or otherwise of a plea of substantial compliance depends upon the facts and circumstances of each case and the purpose and object to be achieved in the context of the prerequisites which are essential to achieve the object and purpose of the rule or regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuate the object and the scope of the statute has not been met. Certainly, it means that the court would determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means “actual compliance in respect to the substance essential to every reasonable object of the statute” and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.*

33. *A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an enactment is insisted, where mandatory and direct recruitment requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-*



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compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the “substance” or “essence” of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words a mere attempt at compliance may not be sufficient, but actual compliance with those factors which are considered as essential.”

14. In **Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to office [(2011) 334 ITR 25 (Gujarat)]**, “notices sent for booking to the speed post Centre is taken into consideration for the purpose of limitation” and in paragraphs 13 to 16, it was held thus:

"13. On a plain reading of Section 149, it is apparent that under the said provision, the maximum time limit for issuance of notice under Section 148 is six years from the end of the relevant assessment year. In the present case, the relevant assessment year in each of the petitions is 2003-2004; the impugned notices are dated 31.03.2010; and the said notices were sent for booking to the Speed Post Centre, Ahmedabad, on 07.04.2010. On behalf of the petitioners, it has been contended that the notices which have been dispatched for service only on 07.04.2010, are clearly time barred inasmuch as the date of dispatch would be the date of issue of the notices. Whereas, on behalf of the revenue, it has been contended that the notices were actually signed on 31.03.2010, hence, the said date would be the date of issue and as such, the impugned notices have been issued within the time limit prescribed under Section 149 of the Act.

14. In the background of the aforesaid facts and contentions, the core issue that arises for consideration is as to when can the notice under Section 148 of the Act be said to have been issued. In this context, it would be necessary to examine the true import of the expression "shall be issued" as employed in section 149 of the Act.



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15. The expression 'issue' has been defined in Black's Law Dictionary to mean "To send forth; to emit; to promulgate; as, an officer issues orders, process issues from court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like, the term is ordinarily construed as importing delivery to the proper persons, or to the proper officer for service etc,

15.1 In P. Ramanathan Aiyer's Law Lexicon the word 'issue' has been defined as follows:-

"Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit, egress or passage out (Worcester Dict.); the ultimate result or end.

As a verb, "To issue" means to send out, to send out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively; to put into circulation; to emit; to go out (Burrill); to go forth as a authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)

Issue or process: Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer's hand for service, at the time it becomes a perfected process.

Any process may be considered 'issued' if made out and placed in the hands of a person authorised to serve it, and with a bona fide intent to have it served"

16. Thus, the expression to issue in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03.2010, whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under Section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the speed post centre only on 07.04.2010, the date of issue of the said notices would be 07.04.2010 and not 31.03.2010, as contended on behalf of the revenue. In the circumstances, impugned the notices under Section 148 in relation to assessment year 2003-04, having been issued on 07.04.2010, which is nearly beyond the period of six years from the end of the relevant



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assessment year, are clearly barred by limitation and as such, cannot be sustained."

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15. In the light of the legal proposition enunciated above, this court is of the opinion that the notices issued by the fourth respondent are not hit by limitation. Thus, there is no reason to interfere with the findings so rendered by the CESTAT.

16. In the result, both the writ petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.)

(J.S.N.P., J.)

30.06.2022

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Speaking Order (or) Non-Speaking Order

To

1. The Customs, Excise and Service Tax Appellate Tribunal,
South Zone Bench, Shastri Bhavan – Annexure,
1st Floor, No.26, Haddows Road,
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<https://www.mhc.tn.gov.in/judis>



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