IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 493 of 2022

1. Global Construction (A Proprietorship Firm), Bokaro Steel City, Bokaro.
2. Mukesh Tripathi --- --- Petitioners

Versus

1. Union of India through the Principal Commissioner, Central Goods & Services Tax, Ranchi.
2. Commissioner (Appeal), Central Goods & Services Tax and Central Excise, Ranchi.
3. Additional Commissioner, Ranchi, Central Goods & Services Tax and Central Excise, Ranchi.
4. Deputy Commissioner (Preventive), Central Goods & Services Tax and Central Excise, Ranchi.
5. Superintendent, Range-III, Division-I, Central Goods & Services Tax and Central Excise, Bokaro. --- --- Respondents

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CORAM: **Hon'ble the Acting Chief Justice**
Hon'ble Mr. Justice Deepak Roshan

For the Petitioners : Mr. Indrajit Sinha, Advocate
Mr. Hemant Jain, Advocate
For the Respondents : Mr. Amit Kumar, Sr.S.C. (CGST)

11/04.01.2023 Heard learned counsel for the parties.

The writ petitioners approached this Court in W.P.(T) No.4329 of 2021 against the garnishee notice dated 30th September 2021 issued under Section 79 of the Central Goods & Services Tax Act, 2017 whereby the respondent Deputy Commissioner (Preventive), Central Goods & Services Tax and Central Excise, Ranchi had frozen the bank account of the petitioners. The writ petition was disposed of without going into the merits of the case since the petitioners had approached the appellate authority on 29th September 2021 against the order-in-original dated 18th December 2018 and immediately on the next date i.e. 30th September 2021 the impugned garnishee notice had been issued during pendency of the appellate proceedings. By order dated 3rd November 2021 passed in the said writ petition the petitioners were granted liberty to move the authority who had issued the garnishee notice and pray for its recall. It was also left open to the petitioners to approach the appellate authority for expeditious disposal of appeal. The appeal has been dismissed on grounds of limitation as being beyond the statutory limit of 60 days prescribed under Section 85 of the Finance Act, 1994 and also beyond the condonable period of 30 days under Section 85(3A) of the Finance Act, 1994 vide impugned order dated 23rd December 2021 passed by the Commissioner (Appeals), Central Goods & Services Tax and Central Excise, Ranchi (Annexure-10).

In the present writ petition the petitioners have not only challenged the appellate order, but also sought quashing of the show-cause notice dated 6th August 2017, the order-in-original dated 18th December 2018 and the garnishee notice dated 30th September 2021 whereby the bank accounts of the petitioners have been attached for realization of tax dues towards service tax, penalty and interest. However, during course of submission learned counsel for the petitioners has, for the present, confined his challenge to the impugned appellate order. He submits that the documents obtained under RTI (Annexure-11) on 24th January 2022 along with the relevant page of dispatch register from the office of the Principal Commissioner, CGST & Central Excise, Ranchi shows that though the track consignment report of speed post showed item delivered on the applicant on 21st December 2018, but the copy of the relevant page of dispatch register at serial no.5 concerning the petitioner shows the following address :-

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Learned counsel for the petitioners submits that the address of the petitioner is M/s Global Construction, Qr. No.1304, Sector-1/C, Bokaro Steel City, District Bokaro (Jharkhand) 827001 as is also apparent from the appellate order and the order in original. The appellate order at paragraph-5 also makes an observation to the effect “If a certified copy of the impugned order was provided to the Appellant on 19.10.2020 by the adjudication branch of CGST & CX, Ranchi, it does not *perse* mean that the copy of the impugned order meant for the appellant was not served.” The appellate authority has also proceeded on an assumption that the show-cause notice dated 6th August 2017 leading to the order in original was also received on the same address. Learned counsel for the petitioners submits that the booking journal of the speed post/dispatch register clearly shows that the address was not correct or incomplete. As such, no presumption of service of order in original could be drawn. A valuable right of appeal cannot be denied on such presumption. There is no reason why the petitioners would not have preferred an appeal within time, had the order been served upon him. Since the order was served by the Adjudication Branch, CGST & CX, Ranchi on 19th October 2020, the petitioners would be entitled to condonation of the delay during COVID period in view of the directions passed by the Apex Court in Suo Motu Writ Petition (Civil) No. 03/2020, such as orders dated 23rd March 2020, 23rd September 2021 and 10th January 2022. It is submitted that if the matter is remanded to the appellate authority, the appeal can be heard on merits as petitioners have good grounds on law as well as on facts in their support.

Learned counsel for the respondents submits that the appellate authority has in the impugned order discussed the instant plea raised by the petitioners of non-service of order in original and discarded it on the basis of the available records of EMS Speed Post packing details of consignment no.EJ236529886IN. The tracking report shows that the order in original was dispatched on 19th December 2018 and delivered on 21st December 2018 itself. As such, petitioners cannot take the plea of relaxation of limitation under the cover of the orders passed by the Apex Court in Suo Motu Writ Petition (Civil) No. 03/2020 since the appeal had become hugely time barred much before the onset of lockdown. It has also been held by the appellate authority that the show-cause notice was also received by the appellant on the same address. After few appearances petitioners failed to appear and contest the show-cause notice before the adjudicating officer. As a result, the order in original was passed on 17th December 2018. Since the provisions of Section 85(3A) of the Finance Act, 1994 provides for condonation of delay of only 30 days beyond 60 days period, the order of the appellate authority does not suffer from any error which requires interference in writ jurisdiction. Learned counsel for the respondents has also relied upon Section 37-C of the Central Excise Act which provides for mode and service of notice.

We have considered the submissions of learned counsel for the parties and taken note of the relevant materials relied upon from the pleadings on records. We have also gone through the impugned appellate order.

The appeal has been rejected by the Commissioner (Appeals), Central Goods & Services Tax and Central Excise, Ranchi only on the point of limitation since it was preferred after almost 2 years and 9 months on

29.09.2021. Under Section 85 of the Finance Act, 1994 the statutory limit of 60 days is prescribed for preferring an appeal. The delay, if any, is condonable up to 30 days beyond the period of 60 days under Section 85(3A) of the Act. However, two facts emerge from the pleadings on records which cannot be ignored: first that the certified copy of the impugned order was provided to the appellant on 19th December 2020 by the Adjudication Branch of Central Goods & Services Tax and Central Excise, Ranchi which means that by that time the relaxation of limitation period as per the directions of the Apex Court in Suo Motu Writ Petition (Civil) No. 03/2020 had commenced due to the COVID lockdown. The other fact which emerges from the information obtained under RTI vide Annexure-11 from the office of the Principal Commissioner, Central Goods & Services Tax and Central Excise, Ranchi dated 24th January 2022 is that the booking journal or the track consignment report of the speed post does not contain the complete address of the petitioner. The relevant details at serial no.5 of the booking journal are extracted hereunder :-

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The address of the petitioner is shown at the cause title in the appellate order as also in the order in original which is M/s Global Construction (A Proprietorship Firm), having its office at Qr. No.1304, Sector-1/C, Bokaro Steel City, P.O. and P.S. Bokaro, District Bokaro (Jharkhand), PIN 827001. As such, it is apparent that notices were issued on incorrect or inadequate address and that too of the Proprietor of M/s Global Construction. The presumption of proof of service of notice is a rebuttable piece of evidence and the track consignment report having an incomplete address of the petitioner, valid service of notice of the order in original cannot be presumed. Section 27 of the General Clauses Act as quoted at paragraph-6 of the impugned appellate order also provides that service shall be deemed to be effected by <u>properly addressing</u>, prepaying and posting it be registered post. Petitioners have therefore rightly contended that it could not have approached the appellate authority earlier.

In such circumstances, we are satisfied that the grounds of rejection of the memo of appeal are not tenable on facts. Accordingly, the appellate order is set aside. The matter is remanded to the appellate authority to consider afresh in accordance with law. The instant writ petition is allowed. Let it be made clear that we have not gone into the merits of the case of the parties so far as the imposition of tax, penalty and interest is concerned.

(*Aparesh Kumar Singh, A.C.J.)*

(Deepak Roshan, J.)

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