16.05.2024
Item No.
ML-16
Court No.5
Saswata

W.P.A. 9258 of 2024

Sonia Jajodia
-vs-
Union of India & Ors.

Mr. Arijit Chakraborty
Mr. Nilotpal Chowdhury
Mr. Prabir Bera
...For the petitioner

Mr. Ranjan Kumar Sinha
Ms. Smita Das De
...For the respondent no. 1

Mr. K.K.Maiti
Mr. Tapan Bhanja
...For the CGST authorities

1. The short point involved in the present writ petition is whether the writ petitioner has been served with a copy of the order in original in a proceeding under Section 73 of the Finance Act, 1994 (hereinafter referred to as the "said Act").

2. It is the petitioner's case that the petitioner was served with a show cause cum demand notice dated 25th April, 2019 in respect of the financial year 2014-15 in terms of Section 73(1) of the said Act. The petitioner had duly responded to the same and upon being afforded with an opportunity of hearing, the said proceeding was disposed of by passing an order in original dated 25th October, 2019. Although, the said order was purported to be served on the petitioner via an email communication dated 6th August, 2022, the petitioner claims that instead of the entirety of the order, a truncated photo copy of the said order was only served on the petitioner. Although, by communications in

writing dated 23rd August 2022 and 28th August 2022 the petitioner had called upon the respondents to make over a copy of the order in original, such letter was purportedly not responded to. On the contrary, a recovery proceeding was initiated by the Superintendent of Central Tax, Range 5, Sankrail, Howrah Commissionerate by issuing the letter dated 8th March 2024.

3. Mr. Chakraborty, learned advocate appearing for the petitioner has placed before this Court the provisions of Section 37C of the said Act in support of his contention that an order in original, ought to have been served on the petitioner in the manner provided therein. In any event, since a complete order has not been served, the petitioner has been prevented from availing her statutory remedy and in the facts of the case as noted above no recovery proceeding can be initiated.

4. Mr. Maity, learned advocate appearing for the CGST authorities by producing the records of this case has attempted to justify that by an email communication dated 20th December 2023, the aforesaid order in original had been served on the petitioner. He, however, submits that the respondents had duly in terms of Section 37C of the said Act had attempted to serve the order in original by registered post. Unfortunately, the postal envelope containing the said order in original has been returned to the respondents with postal endorsement "*insufficient address*". A copy of the said envelope as made over in Court today, is retained with the records.

5. Mr. Sinha, learned advocate enters appearance on behalf of the respondent no. 1.

6. In reply, Mr. Chakraborty, by referring to the communication issued by the recovery officer dated 8th March 2024 submits that the said letter was also forwarded to the petitioner by post and was received at the address of the petitioner. As such, there was no reason for the previous letter to be returned with the endorsement *"insufficient address".* Since, the respondents have failed to demonstrate service of the order in the manner as provided in Section 37C of the said Act, the e mail communication should not be accepted by the Court as proof service of such order.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record.

8. Admittedly, in this case the petitioner had participated in a proceeding under Section 73 of the said Act. The original show cause was served on the petitioner at his registered address. Although, Mr. Maiti had claimed that the envelope containing the order in original could not be served on the petitioner by reasons of "*insufficient address",* I am of the view that the postal endorsement made on the said letter does not raise a presumption of service of the order in original on the petitioner. Although, Mr. Maiti submits that in addition to the postal service attempts have been made to effect service through email communication, I am of the view such communication does not constitute a valid service of the order in original, in respect of proceeding under Section 73(1) of the said Act, by reasons of the provisions

contained in Section 37C of the said Act. To morefully appreciate, Section 37C of the said Act is extracted hereinbelow:-

> ***"37C. Service of decisions, orders, summons, etc.--****(1) Any decision or order passed or any summons or notices issued under this Act or the rules made thereunder, shall be served,--*
>
> *(a) by tendering the decision, order, summons or notice, or sending it by registered post with acknowledgment due [2][or by speed post with proof of delivery or by courier approved by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963)], to the person for whom it is intended or his authorised agent, if any;*
>
> *(b) if the decision, order, summons or notice cannot be served in the manner provided in clause (a), by affixing a copy thereof to some conspicuous part of the factory or warehouse or other place of business or usual place of residence of the person for whom such decision, order, summons or notice, as the case may be, is intended;*
>
> *(c) if the decision, order, summons or notice cannot be served in the manner provided in clauses (a) and (b), by affixing a copy thereof on the notice-board of the officer or authority who or which passed such decision or order or issued such summons or notice.*
>
> *(2) Every decision or order passed or any summons or notice issued under this Act or the rules made thereunder, shall be deemed to have been served on the date on which the decision, order, summons or notice is tendered or delivered by post 3[or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).]"*

9. Having regard to the aforesaid and taking into consideration the fact that the petitioner had not been served with a copy of the order in original dated 25th October, 2019 and further taking into consideration the fact that the order in original dated 25th October, 2019 has been made over by Mr. Maiti to the learned advocate appearing for the petitioner in Court today, I am of the

view that the aforesaid should be construed as a valid service of the order in original dated 25th October, 2019. As a sequel thereto, the recovery notice dated 8th March 2024 shall be kept in abeyance for a period of 30 days from date. The aforesaid order, however, shall not prevent the respondents from initiating any proceedings for recovery upon expiry of the statutory period as provided under the said Act or on expiry of the period mentioned above whichever is later.

10. The petitioner shall be at liberty to take appropriate recourse against the order in original dated 25th October, 2019, as may be advised.

11. With the above observations and directions, the writ petition being WPA 9258 of 2024 is disposed of.

12. All parties to act on the basis of the server copy of this order duly downloaded from this Court's official website.

(*Raja Basu Chowdhury, J.*)