



WA No.466 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2025

CORAM

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

WA No.466 of 2025
and C.M.P.No.3950 of 2025

M/s.Proclaim
rep. By its Partner,
C.J.Jayakumar.

: Appellant

versus

The Commissioner of GST &
Central Excise (Appeals-II)
Chennai,26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

: Respondent

Prayer: Appeal filed against the order of learned Single Judge dated
23.07.2024 in WP No.17602 of 2024.

For Appellant : Mr.Anandh, S.

For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel



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JUDGMENT

(Judgment of the Court was
delivered by MOHAMMED SHAFFIQ, J.)

The present writ appeal is filed challenging the order of the learned Single Judge, whereby the writ petition filed challenging the order dated 25.09.2023 of the First Appellate Authority was rejected on the premise that the appellant herein had availed of the appellate remedy beyond the statutory period and thus exercise of the discretionary jurisdiction under Article 226 of the Constitution of India is not warranted.

2. The appellant is a partnership firm, registered under the Finance Act, 1994. The appellant was engaged in Advertising Agency Services. It was noticed during the assessment year 2015-16, the appellant had neither filed the returns in ST-3 nor discharged its service tax liability. Thus, on the basis of the income that was declared under the Income Tax Act, 1961, a show cause notice in SCN.No.26-2019-ADC dated 07.11.2019 came to be issued, wherein it was proposed to levy service tax of Rs.72,55,238/-.

3. The appellant submitted its reply in response thereto. On a



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consideration of the appellant's reply, an order of adjudication came to be passed. It is important to note that the Order in Original dated 31.03.2021, came to be served on one of the partner's daughter, one Ms.Vaibhavi, on 16.07.2021. Aggrieved by the Order in Original, the appellant preferred an appeal in Appeal No.79 of 2023(CTA-II/CS). The appeal was filed on 24.03.2023, before the respondent herein. It was the case of appellant that the said Ms.Vaibhavi did not inform her father, a partner in the appellant firm nor any of the other partners and only on initiation of recovery proceedings dated 30.01.2023, the appellant became aware of the order dated 31.03.2021. Thereafter, appellant obtained copies of Order in Original and filed an appeal on 24.03.2023.

4. Before proceeding further it may be relevant to extract the grounds raised by the appellant herein, before the respondent. The relevant portion of which reads as under:-

“1.7 It is pertinent to note the following:

(a) The OIO No.16/2021-JC was purportedly issued by the Joint Commissioner of GST & CE on 31.3.2021 but was received by the daughter of the partner of the appellant, Ms.J.Vaibhavi, studying in Jains University Bangalore on 16.07.2021, then undergoing virtual class at home in Chennai. Owing to the serious study, the OIO was



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paced along with the academic books of Ms.Vaibhavi who have subsequently left to attend the college at Bangalore and had also taken all her academic books, containing amongst other the said OIO.

(b) The Appellants nor any of their partners were aware of the receipt of the OIO until the notice of demand dated 30.01.2023 (copy enclosed as Annexure-IV) was served on them.

(c) Thereafter, the Appellants sought details under RTI Act (copy enclosed as Annexure-V) with respect to the following:

1) Date of passing the Order-in-original No.16/2021-JC by the Joint Commissioner of GST & CE, Chennai South Commissionerate.

2) When was the document (mentioned to point (1) above) dispatched.

3) When was the document (mentioned to point (1) above) delivered to the assessee and the name of the person who has received the same?

4) Copy of document supporting point (3) (above)?

5) In case of delay over 15 days in dispatching the Order-in-Original No.16/2021-JC, the reasons thereof?

d) On the same time, the Appellant was informed by the daughter of partner that the said OIO has been found in the academic books and she volunteered to courier the same 22.2.2023 which was received by the Appellant on 23.2.2023 (copy of the tracking slip is enclosed as Annexure VI) supporting the movement of courier.

e) In view pressure from the departmental officers for payment of the amount confirmed, the appellants are left with no other option but to file the statutory appeal before the Commissioner (Appeals-II)."



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5. The appellate authority had rejected the appeal on the premise that the appeal has been preferred after the period prescribed for preferring an appeal under Section 85 (3-A) of the Finance Act, 1994, viz., two month from the date of receipt of the impugned order, and if appeal is not filed within the above period, it may be filed within a further period of 1 month, if sufficient cause is shown. The appellate authority proceeded to reckon the limitation for filing the appeal from 16.07.2021, i.e., the date on which the order was allegedly served on Ms.Vaibhavi i.e., the daughter of one of the partners; therefore, the appeal ought to have been filed on or before 15.10.2021, the appeal, however, was filed on 24.03.2023. Thus, barred in terms of the limitation prescribed in Section 85 (3A) of the Finance Act, 1994, for filing appeal. The relevant portion of the order of the appellate authority/respondent herein reads as under:

“7. No relaxation in time can be given beyond statutorily applicable period as held by Hon'ble Supreme Court in the case of M/s Singh Enterprises [2008 (221) E.L.T. 163 (S.C.)]

8. Further, I am not going into the merits of the case, in view of the findings given above. In support, I rely on the following decision held by the Hon'ble Income Tax Appellate Tribunal in the case of Medsave Health Insurance vs ACIT, CPC, TDS, Ghaziabad in ITA Nos.1027, 10218 & 1014 to 1016/Del/2022 dated 29.03.2022, which was passed by the ITAT relying on the decision of the Hon'ble Madras High Court



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in the case of Vijayeswari Textile Ltd vs. CIT (2002) (131 Taxman 833). In the said order, the ITAT held as follows:

“Coming to the instant case, as the Id Commissioner first should have decided the issue qua condonation of delay in filing of the appeals and on satisfying that the Assessee has failed to establish sufficient cause for not filing the appeals within the prescribed period of limitation, the appeals should have been dismissed at the very threshold only on the point of limitation,...”

9. In view of the above, I hold that the impugned appeal is liable to be dismissed on account of time bar. Accordingly, I dismiss the appeal filed under Appeal Number 79/2023 (CTA-II/CS) dated 24.03.2023 without going into any kind of merits of the case.”

6. Aggrieved by the above order of the appellate authority, a writ petition came to be filed in W.P.17602 of 2024, which was rejected on the ground that the appellant had not availed of the statutory remedy by way of appeal within the prescribed period of limitation, in terms of Section 85 (3A) of the Finance Act, 1994, read with Section 37 C of the Central Excise Act, 1944. It is against the above order of the learned Single Judge, the present appeal has been filed.



7. It is not in dispute that the impugned order has been served on

Ms. Vaibhavi, daughter of one of the partners. Against the above background question arises as to whether such service would be a valid service for the purposes of Section 83 of the Finance Act, 1994, read with Section 37C of the Central Excise Act, 1944. The said Section reads thus:

“Service of decisions, orders, summons, etc.-

37C. (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 [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 maybe, 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*



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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 [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).J”

8. On a reading of the above provision and more particularly sub-Clause (a) to sub-Section (1) of Section 37C of the Central Excise Act, 1944, which stands incorporated into the Finance Act, 1994 by virtue of Section 83 of the Finance Act, 1994, it is clear that for a service to be valid, tender must be to the person to whom it is intended, which in the present case is M/s.Proclaim (Partnership Firm) or his authorised agent, if any. It is relevant to bear in mind that a partnership firm is not a legal entity but a compendious name for the partners¹. While a partner is an agent of the firm in a partnership and each partner acts as the agent of other partners, and thus service on any of the partners would be adequate and valid service on the appellant firm², however, the service on the daughter of a partner cannot be a valid service unless she is an authorised agent of the Firm in terms of Sub-section (1) to Section 37 C of the Central Excise Act, 1944. However, there is no finding, rather it is not even the case of the revenue

¹ *Commissioner of Income Tax Bihar vs. Trilok Nath Mehrotra and others*, (1998) 2 SCC 289;

² *N.Khadervali Saheb and another vs. N.Gudusahib and others*, (2003) 3 SCC 229.



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that Ms.Vaibhavi, daughter of one of the partners, on whom the Order in Original dated 31.03.2021 was served is an authorised agent, for the purposes of Section 83 of the Finance Act, 1994 read with Section 37C of the Central Excise Act, 1944. The onus is on the revenue to show/prove service was validly made in accordance with procedure under the Act. There is sufficient judicial authority for the proposition that the burden of showing that service of notice has been effected on the assessee or his duly authorized representative is on the Revenue³, which remains undischarged in the present case.

9. The learned Counsel for the appellant would place reliance on the decision of the Supreme Court in ***Saral Wire Craft (P) Ltd. vs. Commissioner of Customs, Central Excise and Service Tax, (2015) 14 SCC 523***, wherein while dealing with Section 37C of the Central Excise Act, 1944, it was found that service of order/summons on a kitchen boy may not be a valid service in terms of Section 37C of the Central Excise Act, 1944. The relevant paragraphs of the decision of the Supreme Court after

³ *Fatechand Agarwal v. CWT*; [1974] 97 ITR 701; (Orissa) and *Venkat Naicken Trust v. ITO*; [1999] 107 Taxman 391 (Mad); *CIT v. Thayaballi Mulla Jeevaji Kapasi*; [1967] 66 ITR 147 (SC); *Rambhai Mafatlal Patel v. ITO*; (2021) 18 ITR-OL 36



extracting Section 37C of the Central Excise Act, 1944, are relevant and thus reproduced hereunder:

“6.

Clause (a) of Section 37C (supra) states that any decision, order, summons or notice may either be sent by registered post with acknowledgement due to the person for whom it is intended or his authorized agent. If this mode of service is unsuccessful then service can be effect by affixation. It is not the case of the Department that it simultaneously also dispatched the Order to the Appellant by registered post with acknowledgment due.

7. It is an anathema in law to decide a matter without due notice to the concerned party. Every effort must be taken to meaningfully and realistically serve the affected party so as not merely to ensure that he has knowledge thereof but also to enable him to initiate any permissible action. The Appellant justifiably submits that it was statutorily impermissible for the Respondents to serve the Adjudication Order on a “kitchen boy”, who is not even a middle level officer and certainly not an authorized agent of the Appellant. The version of the Appellant that it learnt of the passing of the Adjudication Order dated 30.3.2012 only when, in the course of the recovery proceedings, the Department’s officials had visited its unit, is certainly believable. The fact that, firstly, the Order had not been passed in the presence of the Appellant, so as to render its subsequent service a formality, and secondly, that the Order came to be passed after an inordinate period of eight months should not have been ignored. This fact should not have been lost sight of by the Authorities below as it has inevitably led to a miscarriage of justice.

8. The Inspector of the Department should have meticulously followed and obeyed the mandate of the statute and tendered the Adjudication Order either on the party on



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whom it was intended or on its authorized agent and on one else. It is not the Respondents' case that Shri Sanjay was the authorized agent. Even before us, despite several opportunities given, the Respondents have failed to file their

response to the Special Leave Petitions so as to controvert the asseveration of the Appellant that Shri Sanjay on whom the decision was tendered was a mere daily wager 'kitchen boy' and that the Appellant had no knowledge of the passing of the Adjudication Order. We are also informed that the recoveries envisaged in the Adjudication Order have already been effected."

10. In the light of the above discussion we are of the view that the order served after a delay of almost four months, that too on the daughter of a partner of the firm, certainly, cannot be termed as effective service in the absence of any finding that the daughter Ms. Vaibhavi is an authorised agent of the appellant for the purposes of Section 83 of the Finance Act, 1994, read with Section 37C of the Central Excise Act, 1944.

11. We are, therefore, inclined to set aside the order of the First Appellate Authority and direct the First Appellate Authority to treat the delay as condoned, and examine and pass orders on merits.



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12. Writ appeal stands allowed. There will be no order as to costs.

Consequently, interim application stands closed.

(K.R.SHRIRAM, C.J.)

(MOHAMMED SHAFFIQ, J.)

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Index : Yes/No
Neutral Citation : Yes/No
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To:

The Commissioner of GST & Central Excise (Appeals-II) Chennai,
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THE HON'BLE CHIEF JUSTICE
AND

MOHAMMED SHAFFIQ. J.

(tar)

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