5
22.04.2026
sb
Ct.3.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27930 of 2025

Sankar Kumar Saha
Versus
Union of India & Ors.

Mr. Promit Majumdar
... For the petitioner.

Mr. Uday Sankar Bhattacharya
Mr. Tapan Bhanja
... For the respondents.

1. Citing extreme urgency, this matter was mentioned upon notice to the respondents and has accordingly been listed under the heading “Motion”.

2. The instant writ petition has been filed inter alia claiming that the order in original dated 30th May, 2023 passed by the Assistant Commissioner, Siliguri Circle-V/VI, Durgapur Audit Commissionerate under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as the “said Act”) having not being served, the petitioner could not avail the appellate remedy and accordingly had approached this Court.

3. When the matter was initially moved by an order dated 17th February, 2026, having regard to the allegation made in the writ petition this Court had directed the respondent no.3 to file a report in the form of an affidavit disclosing how the petitioner was served with the order in original.

4. Pursuant to the aforesaid order, the respondent no.3 has filed a report in the form of an affidavit which is taken on record.

5. From the aforesaid report it would transpire that the said respondent has claimed that the aforesaid order was served to the petitioner through Speed Post, though the consignment track report has not been disclosed. The report would further demonstrate that attempt was made to cause service of the order through Electronic Mail and has claimed that the service has been effected by such process.

6. Having heard the learned advocates appearing for the respective parties, I may note that Section 83 of the Finance Act, 1994 read with Section 37C of the Central Excise Act, 1944 provides the manner in which service of any decision or orders or summons etc. under the said Act are to be made. To morefully appreciate the same the relevant section being Section 37C of the Central Excise Act, 1944 is extracted hereinbelow:-

*"**37C. Service of decisions, orders, summons, etc**.-(1) Any decision or order passed or any summons or notice 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 acknowledgement due for 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 "for courier referred in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1).]"

7. Having regard to the above, I find that though one of the modes of service is by sending the order by registered post with acknowledgement due and for the speed post with proof of delivery, in the instant case, though the respondent no.3 claimed that the same was sent to the petitioner through speed post, however, no acknowledgement due or track consignment report/proof of delivery has been disclosed. The other mode of service allegedly adopted by the respondent no.3 is by electronic mail which is not a recognised mode of service under the said Act. In the light of the above, I am unable to accept the contention of the respondent no.3 that service has been effected through speed post.

8. As such, I would rather give the benefit of doubt to the petitioner and accordingly direct the respondent no.3 to serve the petitioner or his learned advocate on record with the copy of the order in original within a period of fortnight from date. If such delivery is made to the learned advocate for the petitioner, such delivery can be made by hand service as well. Once, such order is served, all consequences shall follow.

9. Having regard thereto, the order of attachment, if any, made by the respondents for non-compliance of the order dated 30th May, 2023, would automatically stand quashed and the attachment of the bank account/s shall be released.

10. With the above observations and directions, the writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for be given to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)