

GAHC010048092023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1333/2023

ABRAHAM KAYA TECHI
CARRYING ON BUSINESS IN THE NAME OF M/S. M.T. ENTERPRISE,
TECHI BUILDING, MODEL VILLAGE,
NAHARLAGUN, PAPAM PARE,
ARUNACHAL PRADESH- 791110.

VERSUS

UNION OF INDIA AND ANR
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
NORTH BLOCK, NEW DELHI- 110001.

2:PRINCIPAL COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
MILAN NAGAR
LANE- F

P.O.- C.R. BUILDING

DIBRUGARH- 786003

Advocate for the petitioner(s): Mr. AK Jain
Mr. BJ Das

Advocate for the respondent(s): Mr. SC Keyal
Standing Counsel, Income Tax

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 10.09.2024

JUDGMENT & ORDER(ORAL)

Heard Mr. AK Jain, the learned counsel appearing on behalf of the petitioner. Mr. SC Keyal, the learned counsel appears on behalf of the respondent Nos.1 and 2.

2. The petitioner herein has assailed the order dated 25.11.2022 passed by the respondent No.2 primarily on two grounds: First, that the impugned order dated 25.11.2022 is in violation to the principles of natural justice, *inasmuch as*, prior to passing of the said impugned order, the petitioner was not issued the show cause notice. The second ground which has been taken is that the respondent No.2 does not have the jurisdiction in view of the fact that the petitioner or his proprietorship concern do not come within the jurisdiction of the Commissionerate of Dibrugarh, as no taxable event had taken place within the said Commissionerate.

3. For appreciating the said submissions, this Court finds it relevant to take note of the brief facts which led to the filing of the instant writ petition. The petitioner herein is the proprietor of a firm in the name and style of 'M/s. M.T Enterprise'. The petitioner and his firm is registered under the Central Goods and Service Tax Act, 2017 (for short, the 'CGST Act') and the Principal place of

business is Tech Building, Model Village, Naharlagun, Papum Pare, Arunachal Pradesh: 791110. The petitioner has also been allotted a GST No. bearing 12AIYPT2833LIZM. As per the said registration certificate, the petitioner's proprietorship firm namely, M/s. M.T.Enterprise do not have any additional place of business in the State of Arunachal Pradesh. It is also seen from Annexure-1 to the writ petition which is a Form 26AS that the petitioner's PAN number is AIYPT2833L and the address mentioned therein is E-I Pang, Sagalee, Pampum Pare district, Sagalee, Arunachal Pradesh 791112. The records further show that the jurisdictional office under the CGST Act, 2017 in respect of the petitioner and his firm is the office of the Commissionerate CGST and Customs, Sector –A Naharlagun 791110.

4. In the backdrop of the above, it is relevant to take note of that on 30.07.2021, a communication was issued to the petitioner in the address namely No.1 Ghilamara, Lakhimpur 787053 by the Superintendent of Central Goods and Service Tax, North Lakhimpur Range. Thereafter, another similar notice was also issued to the petitioner on 11.08.2021 by the Superintendent, Central Goods and Service Tax, North Lakhimpur Range. Subsequent thereto the Superintendent (Adj.) CGST having its Office at Milan Nagar Lane 'F' CR Building, Dibrugarh had issued a notice to the petitioner at the address i.e. No.1 Ghilamara, North Lakhimpur: 787053. Pursuant thereto on 25.11.2022, the respondent No.2 passed the impugned order.

5. It is further relevant to take note of from a perusal of the impugned order that the PAN number of the petitioner which was mentioned i.e. AIYPT2833L. It is also seen from paragraph 1.15 of the impugned order that the show cause

notice was returned undelivered from the address of the noticee i.e. the petitioner with the remark 'Addressee Left, Return to Sender' and under such circumstances, the show cause notice was pasted in the Notice Board of the Divisional Office as well as in the Notice Board of the Hqrs. Office at Dibrugarh. It is further seen from the impugned order itself that the respondent No.2 has assumed that the notice was duly issued and the petitioner inspite of repeated opportunities being given did not avail the same.

CONTENTION OF THE PARTIES:

6. Mr. AK Jain, the learned counsel for the petitioner submitted as follow:

(A). There is no material on record to show that the petitioner had any Office at No.1 Ghilamara, North Lakhimpur. The petitioner's address is only at Naharlagun in Papum Pare district, Arunachal Pradesh and the jurisdictional Commissionerate under the CGST Act of 2017 is the Commissioner of CGST, Naharlagun. He further submitted that even in the Form 26AS which was made the basis of passing the impugned order also mentioned that the petitioner's address is at Naharlagun, Arunachal Pradesh and not at North Lakhimpur, Assam. The learned counsel further submitted that in the instant case as would be seen from the impugned order, the purported show cause notice was issued at the address where the petitioner had no office. It would also be seen from the impugned order also that the show cause notice admittedly was not served and as such, the respondent authorities had pasted the said show cause notice in the Notice Board of the respondent No.2. The learned counsel referred to Section 37C (1)(a) of the Central Excise Act, 1944 (for short, 'the Act of 1944') and

submitted that when an order, notice, summons etc., are to be issued in terms with the said Act of 1944, the same can be done so only by 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 to the person for whom it is intended or his authorised agent, if any.

(B). The learned counsel appearing on behalf of the petitioner further submitted that in case the service could not be meted out in terms with Section 37C (1)(a) then only in such circumstance, Sub-Clause (b) and (c) of Section 37C(1) of the Act of 1944 can be resorted to.

(C). The learned counsel further submitted that the instant writ petition was filed in the year 2023 and notice was issued as far back as on 13.03.2023 and till date, the respondent authorities have not placed any material to show that the petitioner has/had any Office at No.1 Ghilamara, North Lakhimpur, wherein the purported show cause notice was addressed. The learned counsel submitted that this is a case coming within the ambit of the Finance Act, 1994 and by virtue of Section 83 of the Finance Act, 1994, Section 37C had been legislatively incorporated. The learned counsel, therefore, submitted that as there was no service of show cause notice to the petitioner in the address in which the petitioner carries on his business or has its registration, then under such circumstances, the impugned order being passed without a show cause notice is liable to be interfered with.

(D). The learned counsel appearing on behalf of the petitioner further submitted that the documents which have been enclosed as Annexures-6 and 7 to the writ petition are documents which were sent by e-mail and which the petitioner, later on, came to learn. He, however, submitted that

as the mode has been duly prescribed under Section 37C of the Act of 1944 which provision had been legislatively incorporated to the Finance Act, 1994 by virtue of Section 83 of the Finance Act, 1994, the service by way of e-mail is not conceived of.

(E). The learned counsel further submitted that it is only the Commissioner of CGST, Naharlagun, Itanagar Division, who has the jurisdiction over the petitioner and not the respondent No.2 i.e. Principal Commissioner, CGST, taking into consideration that the petitioner's office falls within the jurisdiction of the Commissioner of CGST, Naharlagun. He, therefore submitted that the entire proceedings are vitiated *inasmuch as* an authority had passed an order, who had no jurisdiction as per law.

7. *Per contra*, Mr. SC Keyal, the learned counsel appearing on behalf of the respondent Nos. 1 and 2 submitted that the petitioner was granted various opportunities, but the petitioner did not avail such opportunities and it is under such circumstances that the impugned order was passed. Though no affidavit was filed by the respondents, the learned counsel submitted that as per verbal instructions, the petitioner was also carrying on certain business from No.1 Gilamara, North Lakhimpur, which was liable for payment of service tax and as such notice was issued to the petitioner in the said address. In addition to that, the learned counsel submitted that the proceedings which were initiated by the Commissionerate of CGST, Itanagar was closed in view of the proceedings being initiated by the Commissioner of the CGST, Dibrugarh. The learned counsel also submitted that the petitioner had an alternative and efficacious remedy to challenge the impugned order before the Customs and Excise Service Tax Appellate Tribunal and the said aspect is also mentioned in the impugned order

dated 25.11.2022.

ANALYSIS AND DETERMINATION:

8. Upon hearing the learned counsels appearing on behalf of the parties, three questions arise for determination:

(i). Whether this Court ought to exercise the jurisdiction under Article 226 of the Constitution, in view of the availability of an alternative and efficacious remedy in the form of filing an appeal before the Custom Excise and Service Tax Appellate Tribunal?

(ii). Whether the impugned order dated 25.11.2022 is bad in law on account of non service of show cause notice and an opportunity of hearing being provided to the petitioner? and

(iii). Whether the respondent No.2 had the territorial jurisdiction to adjudicate the subject matter, taking into account that the petitioner claims that he does not have any office or place of business within the jurisdiction of the Respondent No.2?

9. For deciding the first question, this Court finds it very pertinent to take note of the judgment of the Supreme Court, in the case of *M/S Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer cum Assessing Authority and Ors*, reported in (2023) 109 GSTR 402. The Supreme Court in the said judgment, upon making reference to its judgment rendered in the case of *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors*, reported in (1998) 8 SCC 1, observed that there are certain exceptions when the writ court would be justified in entertaining a writ petition, despite the party approaching it, not

availed the alternative remedy provided in the statute. The said exceptions were:

(i) Where the writ petition seeks enforcement of any of the fundamental rights; or

(ii) Where there is a violation of principles of natural justice; or

(iii) Where the order or the proceedings are wholly without jurisdiction; or

(iv) Where the vires of an Act is challenged; or

(v) Where a pure question of law requiring legal determination by the High Court is raised.

10. The above being the settled proposition of law, the question, therefore, arises as to whether this Court should exercise its jurisdiction under Article 226 of the Constitution in the present facts. The answer to the same can be found on the analysis and determination of the question No.(ii) and (iii) *inasmuch as* question No. (ii) relates to violation of the principles of natural justice, whereas question No.(iii) relates to exercise of jurisdiction without authority. Accordingly, this Court, therefore, defers its decision as regards the question No.(i) for the time being and finds it relevant to take note of the question No.(ii) and (iii) *infra*.

11. From the facts above-narrated, there is no material placed before this Court by the respondents to show that the petitioner has any place of business at No.1 Ghilamara, North Lakhimpur. The CGST registration of the petitioner which has been enclosed as Annexure-2, categorically shows that the petitioner's place of business is at Naharlagun, Papum Pare, Arunachal Pradesh. Even the Permanent Account Number (PAN) of the petitioner provided under the Income Tax Act 1961 also shows that the address of the petitioner is at Papum Pare district in Arunachal Pradesh. This Court has also perused the various

notices which have been enclosed as Annexures 6 and 7. The addresses mentioned in those notices were at No.1 Ghilamara, North Lakhimpur and the petitioner had also stated on oath that the said address is not the address of the petitioner and there is no denial to the same by the respondent authorities. It is also pertinent to observe that in paragraph 11 of the writ petition, the petitioner while dealing with the notices which have been enclosed in Annexures No.6 and 7 stated that they were sent through e-mail, which the petitioner did not have the occasion to notice. In fact, a perusal of the impugned order would also show that it was an admitted fact that the petitioner had no address at the place where the show cause notice was issued. Paragraphs 1.15, 1.16 & 1.17 of the impugned order are quoted hereinbelow:

*“1.15. The Show Cause Notice was returned undelivered from the address of the Noticee with a remark **"Addressee Left, Return to Sender"**. As the SCN was returned undelivered, vide this office letter C. No. V(15)19/ADJ/ST/COMMR/DIB/2021/4444 Dated 16.11.2021, the Assistant Commissioner, CGST Tezpur Division was requested to cause delivery of the same to the Noticee. A copy of the SCN has been pasted in the Notice Board of the Divisional Office as well as in the Notice Board of the Hqrs. Office at Dibrugarh.*

1.16. The said Noticee has not submitted any reply to the instant SCN. However, following the principles of natural justice, personal hearings in virtual mode was granted to the Noticee on 15.07.2022 and intimation letter was sent to the jurisdictional Division Office for cause delivery to the Noticee. The Superintendent (Adj.), CGST, Tezpur vide office letter C.No. IV(09)43/Adj/Hqrs Misc/CGST/ACT/202 1/1669 dated 14.07.2022 has informed that Abraham Kaya Techhi is not located at address mentioned in the letter. The contact no. 9436898684 and email address mtentp@mail.com of the Noticee was also communicated in the said letter. Henceforth, letters for PH has been sent to the given email address. Also, the PH fixed for 15.07.2022 was rescheduled on 22.07.2022, but he did not attend virtually. Accordingly, another 2(two) personal hearings on 23.08.2022

and 25.08.2022 were granted to the Noticee virtually and the intimation letters was sent to the above email id. But the Noticee did not attend the personal hearings to present his case. Also, the Noticee did not submit any representation to than effect.

1.17. However, consequent to the change of adjudicating authority, the said Noticee has been granted a Personal Hearing on 02.11.2022 in virtual mode. But the Noticee neither attended the PH nor communicated any reason to that effect.”

12. Based on the proposition of facts laid down before this Court, it relevant to take note of Section 37C of the Act of 1944 which postulates the manner in which service of decisions, orders or summons, etc., are to be effected. Section 37C of the Act of 1944 is reproduced hereinunder:

"SECTION 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 [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], to the person for whom it is intended or his authorized 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 [or courier referred to in sub-section (1)] or a copy thereof is affixed in the manner provided in sub-section (1)."

13. A perusal of the above quoted provision would show that any decision or order passed, or any summons or notices issued under the Act of 1944 or the Rules made thereinunder shall be served in terms which sub-clause (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, to the person for whom it is intended or his authorized agent, if any. There is no mention that such decision or order or summons or notices are to be served by way of e-mail. It also transpires that Sub-Clause (b) and Sub-Clause (c) of Section 37(C)(1) of the Act of 1944 can only be pressed into service, if the service of notice under Sub-Clause (a) cannot be effected.

14. This Court also finds it very relevant to take note of Section 83 of the Finance Act, 1994, whereby some of the provisions of the Act of 1944 have been legislatively incorporated and amongst the various provisions, it includes Section 37C of the Act of 1944. Under such circumstances, it is therefore clear that the service of notice ought to have been made by way of registered post with acknowledgement due or by speed post with proof of delivery or by duly approved courier. The question, however, arises that can it be said that Sub-Clause (a) of Section 37C(1) of the Act of 1944 have been complied with if the

decision, order, summons or notice has been sent not to the proper address, *inasmuch as*, there is no denial to the averments made in the writ petition or any materials placed showing that the petitioner had/has any office at the place where the show cause notice was addressed. The answer has to be in the negative. Under such circumstances, this Court is of the opinion that the recourse to Sub-Clauses (b) & (c) of Clause 37C (1) of the Act of 1944 is not permissible if the show cause notice was not sent at the proper address. In the instant case, it would be seen from a perusal of paragraph 1.15 of the impugned order that recourse to Sub-Clause (c) of Section 37C(1) of the Act of 1944 was resorted to on the ground that the service of the show cause notice could not be effected at No.1 Ghilamara, North Lakhimpur which from the materials placed before this Court do not seem to be the address of the petitioner.

15. In view of the above, this Court, therefore, is of inehisitant view that the impugned order dated 25.11.2022, was passed without affording due opportunity to the petitioner and as such, the same violates the principles of natural justice which is a facet of Article 14 and 21 of the Constitution. The consequential effect of the above opinion of this Court is that this Court can invoke its jurisdiction under Article 226 of the Constitution in the present facts, which is the question No.(i) so formulated hereinabove.

16. Let this Court now analyse and determine the question No.(iii) so formulated hereinabove. The question No.(iii) pertains to as to whether the Office of the Commissionerate, Central Goods and Service Tax, Dibrugarh Division, would have the jurisdiction over the petitioner. This Court at this stage, finds it relevant to take note of the submission of Mr. SC Keyal, who made a

submission on the basis of verbal instructions to the effect that the petitioner had carried out business thereby rendering service within the jurisdiction of the Commissionerate of GST, Dibrugarh Division. The said submission, however, is not based on any documents being placed before this Court or on the basis of any affidavit. At the cost of repetition, this Court finds it pertinent to reiterate, that the respondent authorities were afforded various opportunities to file their affidavit, which they failed to do so.

17. During the course of hearing, this Court enquired with the learned counsel appearing on behalf of the petitioner as to whether the petitioner is registered as per the provisions of the Finance Act, 1994 and if so, as to whether the petitioner registration is centralized or work specific. Mr. AK Jain, the learned counsel appearing on behalf of the petitioner submitted that the petitioner being exempted from payment of service tax, as such, the petitioner did not have service tax registration.

18. At this stage, this Court finds it relevant to take note of the Sub-Rules (2) & (3) of Rule 4 of the Service Tax Rules, 1994 (for short, the 'Rules of 1994'). It stipulates that when a person is liable for payment of service tax on a taxable service and provides such service(s) from more than one premises or offices; or receives such service(s) in more than one premises or offices; or is having more than one premise or office, which are engaged in relation to such services in any other manner, making such person liable for payment of service tax, such person can opt for a centralized billing system or a centralized accounting system in respect to such service(s) or he shall make separate applications for registration of each premise or office to the jurisdictional Superintendent of

Central Excise.

19. From the facts narrated hereinabove and the submission of the learned counsel for the petitioner, it is clear that the petitioner did not register himself or for that matter do not have a registration under the Finance Act, 1994. The question whether the petitioner had carried out any activities liable for payment of service tax within the jurisdiction of the respondent No.2 is a question of fact which in the opinion of this Court can be very well adjudicated upon by the jurisdictional Officer. Taking into consideration that the impugned order is held to be bad in law for violation of the Principles of Natural Justice, the petitioner herein would be at liberty to take his defence on the questions as to whether the petitioner would be liable to pay service tax as well as to whether the respondent No.2 shall have the jurisdiction

20. Under such circumstances, taking into account that the petitioner does not hold any registration under the Finance Act of 1994, and the registration under the CGST Act of 2017 have no relevance, this Court is of the opinion that the issue pertaining to territorial jurisdiction should be decided by the respondent No.2, provided the respondent No.2 decide to issue a fresh show cause notice to the petitioner at his proper address.

Conclusion:

(I). The impugned order dated 25.11.2022 is set aside and quashed on the ground that the same has been passed in violation to the Principles of Natural Justice. The corrigendum which has been issued on 16.12.2022 which has also been put to challenge and being based on the impugned

order dated 25.11.2022 which has been set aside and quashed is also set aside and quashed.

(II). The setting aside and quashing of the impugned order dated 25.11.2022 and the corrigendum dated 16.12.2022, however, shall not preclude the respondent authorities, more particularly, the respondent No.2 to initiate fresh steps under the extant provisions of law. However, if such steps are taken, the petitioner should be issued a show cause notice in the address i.e. Tech Building, Model Village, Naharlagun, Papum Pare, Arunachal Pradesh: 791110 which as per the petitioner is the present address of the petitioner.

(III). The impugned order dated 25.11.2022 is interfered with on the ground of violation of the Principles of Natural Justice, and, as such, the period from issuance of the show cause notice i.e. on 16.11.2022 till a certified copy of this judgment is served upon the respondent No.2, be excluded, while computing the period of limitation for initiating a *de novo* process under the extant law.

(IV). The question No.(iii) pertaining to territorial jurisdiction is remitted back to be decided by the respondent No.2. The petitioner would be at liberty to raise all such defenses as permissible under the law.

21. With the above observation(s) and direction(s), the instant writ petition stands disposed of.

JUDGE

Comparing Assistant