

09.06.2025

sayandeep

Sl. No. 20

ML

Ct. No. 05

WPA 2774 of 2025

M/s Carry Co, Prop: Mr. Kajal Kumar Garai

Vs.

Union of India & ors.

Mr. Pratip Mukherjee

Mr. Raju Mondal

Mr. P. Biswas

.... for the petitioner

Mr. Anirban Ray, Ld. GP

Mr. Md. T. M. Siddiqui, Ld AGP

Mr. Nilotpal Chatterjee

Mr. Tanoy Chakraborty

Mr. Saptak Sanyal

..... for the State

Mr. Kaushik Dey

Mr. Tapan Bhanja

....for the CGST authority

1. Challenging the order dated 24th December, 2024 passed by the appellate authority under Section 107 of the WBGST/CGST Act, 2017 (hereinafter referred to as the said Act), rejecting the petitioner's appeal on the ground of delay, the present writ petition has been filed.
2. At the very outset, Mr. Majumder, learned advocate appearing in support of the writ petition by drawing attention of this Court to the provisions of Section 169 of the said Act would submit that though the order impugned was uploaded on the portal, however, considering the fact that no service was effected by adhering to the mode of service provided for in Section 169(1) Clauses (a) to (c) of the said Act, the service on the portal cannot be said to be complete and hence, it cannot be said that there was any delay on the part of the petitioner in preferring the appeal. In support of his contention that the State is obliged to comply with Clauses (a) to (c) of sub Section 1 of Section 169 at the first instance and only thereafter can

choose to rely on the service as contemplated in Clause 169(1)(a) of the said Act, reliance is placed on the Judgment delivered by the Madras High Court in the case of ***P. N. Traders vs. Deputy State Tax Officer***, reported in **(2025)27 Centax 383 (Mad.)**.

3. In any event, he would submit that the appellate authority without appropriately considering the petitioner's application for condonation of delay has dismissed the appeal which is not permissible.
4. Mr. Chakraborty, learned advocate enters appearance on behalf of the respondents. He would submit that language used in Section 169(1) of the said Act makes it abundantly clear that service of notice by any of the modes provided for in sub-Section 1 Clauses (a) to (f) constitutes good service, with the only restriction that in the event service through the modes contemplated in Clause (a) to (d) or (e) is not possible then only the notice as contemplated in Section 169(1)(f) of the said Act can be issued.
5. In the instant case, however, the notice of the order was through the portal which is as per Clause (d) of Sub-Section 1 of Section 169 of the said Act. According to him, the aforesaid constitutes good service. As such the petitioner cannot be permitted to claim that service of the order through the portal is not a good service or can only be effected if the other modes of service under Clauses (a) to (c) cannot be employed. As such the petitioner cannot claim that the delay has occurred since no notice communicating the aforesaid order was served on the petitioner.
6. Heard learned advocates appearing for the respective parties and consider the materials on record. Having regard to the

contention raised by the petitioner, it would transpire that the petitioner seeks to challenge the mode of communication of the order through the online portal and claims that unless State complies with and exhausts the mode of communication as provided under Section 169(1) Clauses (a) to (c) at the first instance, the State cannot be permitted to rely on the mode of communication provided for in Clause 169(1)(d) of the said Act, to establish service of the order on the petitioner.

7. Admittedly, in this case, the order issued under Section 73 of the said Act for the tax period of 2017-2018 to 2019-2020 was preceded with a show-cause notice. The show-cause was duly uploaded on the portal. The petitioner had duly responded to the show-cause and thus, had notice of the proceeding.
8. Subsequently, the order under Section 73(9) of the said Act dated 28th December, 2023 was passed and was also uploaded on the portal. On this occasion, however, the petitioner would complain that the service on the portal in absence of service of the order through the other modes as contemplated under Clauses (a) to (c) at the first instance, do not constitute good service. To test out the petitioner's case, it is necessary to consider the provisions of Section 169 of the said Act. To morefully appreciate the same, the aforesaid section is extracted herein below:

“169. Service of notice in certain circumstances. (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with

the business, or to any adult member of family residing with the taxable person; or
 (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorized representative, if any, at his last known place of business or residence; or
 (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
 (d) by making it available on the common portal; or
 (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
 (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

9. Having considered the provisions of Section 169 (1) and Section 169 (2) and Section 169(3) of the said Act, it would be amply clear that any decision or order or summon or notice or other communication of the Act or the Rules made thereunder shall be served by one of the modes provided for under the various clauses of sub-Section 1 of Section 169 of the said Act. It transpires therefrom that Clause (a) provides for giving or tendering the notice or order or other communication under the said Act as the

case may be, directly or by messenger including a courier to the addressee or to a taxable person. Clause (b) provides for service of such notice or order or communication as the case may be by registered post while Clause (c) provides for sending the communication to the E-mail address provided at the time of registration or as amended from time to time. While the mode of service in the case of Clause (d) contemplate, by making the same available on common portal. Alternatively, as per Clause (e), the mode of service is by publication in the newspaper. Thus, the mode of service provided in the above clauses are all in the alternative and the same is amplified by use of the word 'or' after each clause.

10. Insofar as the Clause (f) is concerned, the same starts with the words "*if none of the mode aforesaid is practicable*". Having regard to the clear language used in Clause (f), it would transpire that only if the manner of service as contemplated in Clauses (a) to (e) of sub-Section 1 of Section 169 is not practicable then and in such circumstances the mode and manner of service through Section 169(1) Clause (f) is permissible. In addition thereto, a perusal of the provisions contained in sub Sections 2 and 3 would clearly establish that a decision or order or summon or notice or communication as the case may be is required to be effected or is deemed to have been served on the date on which the same is tendered or published or a copy is affixed as per Clause 1.
11. Having regard thereto, the making the same available on the portal or publication in the newspaper, under Clauses (d) or (e) as the case may be, can be said to be

sufficient communication of decision, order, summon, notice as the case may be. Sub-Section 3 of Section 169 does not support the petitioner's case either. Although, in the Judgment delivered in the case of ***P.N. Traders*** (supra), by quoting a passage from WP (MD)No. 26481 of 2024 the Coordinate Bench of the Hon'ble Madras High Court had set aside the order of assessment and though Mr. Mukherjee by relying on paragraph 7 of the said Judgment has attempted to make out a case that Section 169 mandates service of notice in-person or by registered post or to the registered e-mail at the first instance and alternatively, on the failure to complete service through the aforesaid modes that making the same available on the portal or publication through the newspaper would constitute good service, I am unable to accept the same especially having regard to the clear language employed in Section 169 of the said Act. It is well settled that for the purpose of interpretation of the statute, the unambiguous and plain language of the statute has to be given preference.

12. In the instant case, I find that the unambiguous and plain language employed in Section 169(1) read with sub-Sections 2 and 3 makes it amply clear that the service of notice can be effected by any of the modes provided for in Clauses (a) to (f) of Section 169(1) of the said Act. The only restriction in my view in effecting service, is found in Clause 169(1)(f) since, the opening words of the said Clause requires that "*if none of the modes as aforesaid is practicable*", that is to say modes of service provided for in Clauses (a) to (e) is not practicable, then the mode of

service as provided in Clause (f) can be applied. Thus, having regard to the clear language employed in Section 169 of the said Act, no view, contrary to the intention expressed in the above section is acceptable. As such I respectfully disagree with the view expressed by the Hon'ble Madras High Court in the case of ***P.N. Traders*** (supra).

13. In view thereof, I am unable to accept the contention of Mr. Mukherjee that service of notice of the order under Section 73 of the said Act on the petitioner was not complete without a personal service thereof on the petitioner as per the mode provided in Section 169(1) Clauses (a) to (c) of the said Act.
14. On the issue of consideration of the application for condonation of delay, I find that the appellate authority had mechanically by relying on the provisions of sub-Section 4 of Section 107 of the said Act and by treating that it has no power to condone the delay beyond the extended period of one month, had rejected the appeal. In this context, I may note a Division Bench of our High Court in the case of ***S.K. Chakraborty & ors. vs. Union of India (MAT 81 of 2022 & MAT 82 of 2022)*** has already taken a view on the power of the appellate authority to condone the delay beyond the extended period of one month. Having regard thereto, I am unable to accept the reasoning provided by the appellate authority.
15. In view thereof, I set aside the order dated 24th December, 2024.
16. Considering the case made out by the petitioner and the explanation provided though, the explanation does not

appear to be entirely sufficient however, considering the fact that at present the appellate tribunal is yet to be constituted and in the fitness of things it would only be appropriate to direct the appellate authority to hear out and dispose of the appeal on merit subject however, the petitioner making payment of a sum of Rs. 25,000/- to the Secretary, High Court Legal Services Committee, High Court, Calcutta.

17. In the event the petitioner makes payment of the aforesaid amount within a period of 4 weeks from date, the appellate authority having regard to the observations made herein shall hear out the appeal on merits by giving opportunity of hearing to the petitioner.
18. With the above observations and directions, the writ petition is disposed of.

(Raja Basu Chowdhury, J.)