Neutral Citation No. - 2025:AHC-LKO:36334-DB

Court No. - 2

Case :- WRIT TAX No. - 575 of 2025

Petitioner :- M/S D.R. Hotels Pvt. Ltd. Gomti Nagar Lucknow Thru. Finance Director Mr. Amitabh Porwar

Respondent :- Deputy Commissioner,Sector 20 State Gst Lucknow

Counsel for Petitioner :- Jameel Ahmad

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.
Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Vineet Kumar Singh, learned counsel appearing for the petitioner and Sri Sanjay Sarin, learned counsel appearing on behalf of the respondent.

2. At the outset, learned counsel for the petitioner submits that there are typographical errors in the petition in as much as the authority who has passed the impugned order has wrongly been mentioned as Additional Commissioner, State Tax Grade II while the impugned order has been passed by Deputy Commissioner, Sector 20, Lucknow and prayed that he may be permitted to make necessary amendment in the petition.

3. The oral prayer is allowed. Learned counsel for the petitioner is directed to make necessary amendment during course of the day.

4. By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner has assailed the assessment order dated 19.2.2025 passed by Deputy Commissioner, State Tax, Sector-20, Lucknow under Section 73 of Goods and Services Tax (GST) and also consequential order dated 11.6.2025 passed by Deputy Commissioner, Khand-20, Lucknow wherein the bank account of the

petitioner has been freezed.

5. It has been submitted that the petitioner is running a 5 star Hotel at Lucknow which is registered with GST Department. The present dispute pertains to period April, 2020 to March, 2021 where the assessment proceedings were conducted by the assessing officer. It has been submitted that notices were issued to the petitioner on e-mail and mobile number provided by him at the time of registration under the GST Act. Without receiving any reply/response from the petitioner the assessing authority proceeded to make ex-parte assessment by means of the impugned order dated 19.2.2025.

6. Petitioner submits that he did not receive any communication or any of the notices sent by the assessing authority. At the time of registration with the authority is under the GST Act , the mobile number as well as e-mail address was given which pertained to the Manager of the petitioner who was dealing with the aspect pertaining to accounts and assessment at the relevant time . It is stated that subsequently the said Manager has left his job and consequently the e-mail address was not accessible to the petitioner and the mobile number given at the time of registration were personal numbers of the said Manager concerned and it is in aforesaid circumstances that the petitioner was unaware of the proceedings of assessment and consequently could not appear before them and put his defence, and respond to the notice as he was not aware of the proceedings of assessment. He further submits that even final orders passed in the assessment proceedings which has been impugned in the present writ petition was never communicated to the petitioner and it is for the aforesaid reasons that he could not file an appeal within the time. He submits that it is only when the proceedings for freezing of the bank account have been undertaken by the respondents then he became aware of the assessment proceedings and by that time the limitation period of filing an appeal under Section 107 of the CGST Act had expired and consequently the present petition has been filed

challenging the assessment proceedings and also the order freezing his bank account.

7. Learned counsel for the petitioner has relied upon the judgment of Madras High Court in the case of ***Sakthi Steel Trading Vs. Assistant Commissioner (ST), Vandavasi Assessment Circle, Vandavasi passed in writ petition No.4122 of 2022*** decided on 29.1.2024 and also the judgment in the case of ***Tvl. Sri Mathuru Eswarar Traders Vs. The Deputy State Tax Officer -I, passed in writ petition No.16787 of 2025*** decided on 8.5.2025**,** in support of his submissions**.**

8. Learned counsel appearing for the respondents has raised a preliminary objection pertaining to the maintainability of the writ petition and submitted that the petitioner has an equally efficacious remedy of filing an appeal under section 107 of the GST act before the appellate authority.

9. He submits that with regard to the assessment proceedings and service of notice specific provision has been provided for under the GST Act. He submits that detailed procedure has been laid down under Section 169 of GST Act by which various modes of service have been provided for, including tendering it directly or by a messenger including a courier to the addressee or sending it by registered post or speed post or by sending to the e mail address made available at the time of registration, or by making it available on the common portal or by publication in a news paper circulating in the locality. It is further stated that if the service cannot be effected by any of the aforesaid modes, 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 passed such decision or order or issued such summons or notice. He further submits that as per clause (2) of Section 169 it is provided that 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). It has further been made clear that communication has to be made by one of the modes provided for under Section 169 and once the respondents have sent communication through e-mail provided by the petitioner in the registration form then service of notice would be deemed to have been completed and it would be deemed to have been served on the date on which is has been tendered to the assessee. Accordingly, it is submitted that it was the duty of the petitioner to have to have duly communicated to the department the changed e-mail address or mobile number, and by failing to provide current e- mail address and mobile numbers, the assessing authority cannot be faulted with regard to service of notice upon the petitioner and the proceedings cannot be set aside on the ground that service was not effected upon the petitioner prior to initiation of the assessing proceedings.

10. Learned counsel the petitioner has responded by submitting that he was not given any opportunity before the assessing authority during the assessment proceedings, and accordingly the same has been held in violation of the principle of natural justice and deserve to be set aside. He submits that as per the judgement of the Madras High Court, apart from serving the petitioner through email and the mobile number provided at the time of registration the respondent should have also served the petitioner through registered post as provided for under section 169 of the GST Act.

11. We have given anxious consideration to the rival contentions of the parties. Pertaining to service of notice to the petitioner during the assessment proceedings it would be necessary to reproduce the provisions of Section 169 of the GST Act which reads as under:-

Section 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 authorised 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."

12. A perusal of the provisions of Section 169 indicates that five modes of service have been provided and further that 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). Therefore, service can be effected at the discretion of the assessing authority by giving or tendering the notice directly or by a messenger including a courier or by registered post or by speed post or courier or by sending e- mail and or by making it available on the common portal or by publication in a news paper 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. We have further notice that in case noticed cannot be served by any of the aforesaid modes prescribed therein it can be affixed 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 is prescribed to issue such orders, notices of summons. In the present case the petitioner has been served through e-mail address provided at the time of registration.

13. A perusal of the impugned order dated 19.2.2025 itself indicates that registered mobile number of the petitioner has been given as well as registered e-mail address is mentioned as vivek.bhanawat@marriott.com.

14. The assessing authority in the impugned order has recorded that considering the discrepancy in the return filed by the petitioner are notice under section 61 of the GST act was sent on 04/10/2024 requiring the petitioner to remove the discrepancy pointed out in the said notice by 19/10/2024. The petitioner did not respond to the aforesaid notice, and accordingly a notice under section 73 of the GST act was issued on 22/11/2024 asking the petitioner to respond by 23/12/2024. Again, no response was received by the authority, and

nor was the reply uploaded on the portal and accordingly another notice was sent to him on 11/01/2025 asking him to respond by 15/01/2025 and file his reply. The petitioner did not either deposit the amount as directed by the assessing authority, nor did he reply to the notice and accordingly in the aforesaid circumstances the matter was heard ex - parte and decided by the impugned order dated 19/02/2025 which has been assailed in the present writ petition.

15. We find that the petitioner was duly communicated by the tax department as per the modes prescribed under Section 169, and therefore, it cannot be said that there was any violation of principles of natural justice. While interpreting the provision of section 169 we will also have to consider Section 13 of the Information Technology Act, 2000. According to Section 13 (2) electronic record deemed to be received when it enters the designated computer recourse. Similarly, as per section 13(3) unless it is otherwise agreed between the parties and electronic record is deemed to be dispatched at the place of the originator has his place of business is deemed to be received at the place of the addressee has his place of business. Section 13 of Information Technology Act, 2000 is being reproduced as under :-

> *"13. Time and place of despatch and receipt of electronic record.—(1) Save as otherwise agreed to between the originator and the addressee, the despatch of an electronic record occurs when it enters a computer resource outside the control of the originator. (2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely:— (a) if the addressee has designated a computer resource for the purpose of receiving electronic records,— (i) receipt occurs at the time when the electronic record enters the designated computer resource; or (ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee; (b) if the addressee has not*

designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee. (3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be despatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business. (4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3). (5) For the purposes of this section,– (a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business; (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business; (c) ―usual place of residence‖, in relation to a body corporate, means the place where it is registered."

16. In the present case, we cannot lose sight of the fact that at the time of registration the petitioner has disclosed his e-mail address and the mobile over for the purpose of communication, and there is, therefore, an agreement for exchange of communication through electronic mode. In case, the assessee has given a wrong email address, or an email address which is not accessible by him, may or may not be a valid defence which may be determined on the facts of each individual case, but one thing is clear that the respondent cannot be held be responsible for not giving adequate opportunity of hearing to the petitioner.

17. Considering the submissions made with regard to existence of an alternate remedy it would be beneficial to rely upon the observations of the Hon'ble Supreme Court in the case of ***Assistant Commissioner of State Tax and others Vs. Commercial Steel Limited, (2022) 16 Supreme Court Cases 447*** where in similar circumstances following observations are made:-

"10. The respondent had a statutory remedy under Section 107. Instead of availing of the remedy, the respondent instituted a petition under Article 226. The existence of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is:
(i) a breach of fundamental rights;
(ii) a violation of the principles of natural justice;
(iii) an excess of jurisdiction; or
(iv) a challenge to the vires of the statute or delegated legislation.
11. In the present case, none of the above exceptions was established. There was, in fact, no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition. The assessment of facts would have to be carried out by the appellate authority. As a matter of fact, the High Court has while doing this exercise proceeded on the basis of surmises. However, since we are inclined to relegate the respondent to the pursuit of the alternate statutory remedy under Section 107, this Court makes no observation on the merits of the case of the respondent."

18. Accordingly, in the aforesaid circumstances, we are of the considered opinion that the service of notice was made as per the provisions of Section 169 (c) of the GST Act and therefore, there was no breach of the fundamental rights of the petitioner with regard to service prior, during and after the assessment proceedings. In the aforesaid circumstances this court of the considered that the petitioner has an efficacious remedy by way of an appeal and therefore, the aspect of service can also be duly looked into after considering the facts and material produced by the petitioner and therefore for the said reason we do not proceed to determine the question as to whether as per sub clause 2 of section 169 once the service has been effected as per sub clause (c) & (d) of section 169, it shall be deemed to have

been served on the date it is tendered.

19. Accordingly, we do not find any merit in the claim of the petitioner that there is breach of fundamental rights that has occurred by not giving opportunity to the petitioner during the assessment proceedings and the impugned order has been passed without giving opportunity of hearing.

20. We further notice the Supreme Court judgment in the case of ***Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal (2014) 1 Supreme Court Cases 603,*** **t**he relevant portion of which is quoted as under:-

> *"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

21. Accordingly, we agree with the preliminary objection raised by learned counsel for the respondents that the petitioner has equally efficacious statutory remedy under Section 107 of GST Act before the First Appellate Authority and accordingly he is relegate to the same.

22. For the reasons aforesaid, we find that the writ petition is not maintainable and the petitioner has equally efficacious remedy and accordingly he is relegated to the same. The petition is **dismissed.**

(Arun Kumar Singh Deshwal, J.) (Alok Mathur, J.)

Order Date :- 25.6.2025
RKM.