

A PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-1

v.

NRA IRON & STEEL PVT. LTD.

Miscellaneous Application No. 814 of 2019

B

IN

(Civil Appeal No. 2463 of 2019)

OCTOBER 25, 2019

[UDAY UMESH LALIT AND INDU MALHOTRA, JJ.]

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Practice and Procedure – Notice of SLP – Service of – Applicant-company sought to re-call Judgment passed by the Supreme Court on the ground that the applicant-company was not served with the notice of the SLP – Acknowledgment receipt in the record showed one ‘SN’, chartered accountant of the applicant-company had received dasti notice on 13.12.2018 – ‘SN’ submitted that he bonafide believed that the documents were “some income tax return documents from the Income Tax Department” and further submitted that he was suffering from an advanced stage of cataract and had undergone a surgery in both eyes on 04.01.2019 and 23.01.2019 – Applicant-company contended that ‘SN’ was not the ‘principal officer’ of the applicant and hence service could not have been effected upon him – Held: ‘SN’ admittedly was the power of Attorney holder of the applicant for the A.Y. 2009-10 and was the agent of the assessee-company and hence notice could be served on him as the agent of the assessee-company in the present case –

D *‘SN’ did not disclose as to when the envelope containing dasti notice was opened – Further, submission of ‘SN’ that dasti notice from the Supreme Court was considered by him as to be ‘some income tax return documents’ lacked credibility – Dasti notice was served on him on 13.12.2018, which was much prior to his surgery – He had*

E *sufficient time to inform the applicant of the proceedings – Also, ‘SN’ had appeared before the Income Tax Authorities to represent the applicant on various dates prior to his surgery – Therefore, no credible or cogent grounds for re-call of judgment made out – Applicant was duly served through authorised representative.*

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Dismissing the Miscellaneous application, the Court A

HELD: 1. 'SN', a Chartered Accountant admittedly being the Power of Attorney holder of the Applicant for the A.Y. 2009 – 10 was the agent of the Assesse – Company, and hence Notice could be served on him as the agent of the Assessee – Company in this case. [Para 12][1111-F] B

2. The ground taken by 'SN' that even though Notice was served on 13.12.2018, he assumed that they were "some Income Tax Return Documents" lacks credibility. It is difficult to accept that the envelope containing the *dasti* Notice from this Court was considered to be "some Income Tax Return documents". The deponent does not at all disclose as to when the envelope containing the *dasti* Notice was ever opened. Furthermore, the ground urged that the Chartered Accountant was suffering from an advanced stage of cataract, and hence was constrained from informing his clients is again not worthy of credence. The *dasti* Notice was admittedly served on him on 13.12.2018 at his office, which was much prior to his surgery which he states took place on 04.01.2019. 'SN' had sufficient time to inform the Applicant – Company of the proceedings, prior to his surgery. Furthermore, 'SN' appeared before the Income Tax Authorities to represent the Applicant – Company and its sister concerns on various dates prior to his surgery i.e. on 14.12.2018, 21.12.2018, 28.12.2018 and 29.12.2018. [Para 13][1111-G; 1112-A-C] C D E

3. Keeping in view the above-mentioned facts and circumstances, this Court is satisfied that the Applicant – Company was duly served through their authorized representative, and were provided sufficient opportunities to appear before this Court, and contest the matter. The Applicant – Company chose to let the matter proceed *ex-parte*. The grounds for Re-call of the Judgment are devoid of any merit whatsoever. [Para 14][1112-D] F

State of Rajasthan v. Basant Nehata (2005) 12 SCC 77 : [2005] 3 Suppl. SCR 1 – relied on. G

Case Law Reference

[2005] 3 Suppl. SCR 1 relied on Para 12

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- A CIVIL APPELLATE JURISDICTION: Miscellaneous Application No. 814 of 2019 in Civil Appeal No. 2463 of 2019.

From the Judgement and Order dated 26.02.2018 of the High Court of Delhi at New Delhi in ITA No. 244 of 2018.

- B ANS Nadkarni, ASG, Sidharth Luthra, Sr. Adv., Ms. Ranjana Roy Gawai, Ms. Vasudha Sen, Ujjwal Jain, Ms. Divya Roy, Ms. Praveena Gautam, D. L. Chidanand, Ms. Anil Katiyar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

- C 1. The present Application has been filed for Re-call of the Judgment dated 05.03.2019 passed by this Court in C.A. No. 2463 of 2019, on the ground that the Applicant – Company was not served with the Notice of the SLP at the registered office of the Company, nor was a copy of the SLP served on the Applicant – Company. Consequentially, since the Judgment was passed *ex-parte*, the Applicants prayed for Re-call of the Judgment and a *de novo* hearing.

- D 2. The Applicants submit that the Court Notices were sent to the earlier registered office address of the Applicant – Company i.e. at 310, 3rd Floor, B-Block, International Trade Tower, Nehru Place, New Delhi. However, on 19.05.2014, the Applicant – Company changed its registered office to 211, Somdutt Chambers II, 9, Bhikaji Cama Place, New Delhi – 110066.

E Thereafter, on 23.01.2019, the registered office was again changed to 1205, Cabine No. 1, 89 Hemkunt Chambers, Nehru Place, New Delhi.

- F 3. The Applicants submit that they learnt of the Judgment dated 05.03.2019 passed by this Court from a news clipping published in the Economic Times on 07.03.2019. Subsequently, the Application for recall was filed on 12.03.2019.

- G 4. The Applicant – Company submits that on an inspection of the court record, they learnt that the Affidavit of *dasti* service filed by the Revenue – Department on 19.12.2018, showed an acknowledgment receipt by Mr. Sanjeeva Narayan, the Chartered Accountant of the Applicant – Company on 13.12.2018.

- H 5. The Applicant – Company placed on record the Affidavit of Mr. Sanjeev Narayan – Chartered Accountant, wherein he has stated that he was the authorized representative of the Respondent – Company before the Income Tax Authorities but was not engaged before the High

Court, or the Supreme Court. The Chartered Accountant further submits that he had received service on 13.12.2018 from one of the Inspectors of the Income Tax Department, but he *bona fide* believed that the documents were “some Income Tax Return documents from Income Tax Department.” A

The Chartered Accountant further submits that he was suffering from an advanced stage of cataract, and had undergone a surgery in both the eyes on 04.01.2019 and 23.01.2019 respectively. B

6. The Applicant – Company during oral arguments submitted that Mr. Sanjeev Narayan – Chartered Accountant was representing the Applicant – Company in all its cases, as also the sister concerns including M/s. Tata Steel BSL Ltd. (earlier known as Bhushan Steel Ltd.) before the Income Tax Authorities, and continues to represent the Applicant – Company even as on date. C

7. This Court *vide* Order dated 19.08.2019, called for the original record from the Income Tax Appellate Tribunal and the Delhi High Court. D

In the meanwhile, the Department was granted time to file their objections.

8. The Department in the Counter Affidavit submitted that the *dasti* Notice was duly served on Mr. Sanjeev Narayan at his office address, in his capacity as the authorized representative of the Applicant – Company, who was holding a Power of Attorney of the Assessee – Company for the A.Y. 2009 – 10. The Power of Attorney appoints all four partners of the firm i.e. Mr. Mohan Lal, Advocate, Mr. Ashwani Kumar, Chartered Accountant, Mr. Sanjeev Narayan, Chartered Accountant and Mr. Surender Kumar, FCA as their Counsel, and authorizes them to represent the Applicant – Company at all stages of the proceedings. The Power of Attorney executed by the Applicant – Company in favour of Mr. Sanjeev Narayan was placed on record. E F

9. It was further submitted on behalf of the Revenue that even though Mr. Sanjeev Narayan has stated that he underwent the cataract surgery on 04.01.2019 and 23.01.2019, this was much after the Notice had been served on 13.12.2018. Hence, there was ample time for him to inform his clients of the pendency of the proceedings. G

10. It was further submitted that Mr. Sanjeev Narayan had appeared before the Tax Authorities after the date of service on 13.12.2018, and prior to his surgery, to represent the Applicant – Company H

A and its sister concerns on 14.12.2018, 21.12.2018, 28.12.2018 and 29.12.2018.

In these circumstances it was pointed out that there was no merit in the contention raised by the Applicant – Company, and hence no ground was made out to Re-call the Judgment and Order dated 05.03.2019

B passed by this Court.

11. We have heard the learned Counsel for the parties and perused the record.

This Court in C.A. No. 2463 of 2019, issued Notice to the Assessee - Applicant *vide* Order dated 12.11.2018. Since *dasti* service was
C effected on 13.12.2018 on the Applicant – Company, the matter was listed on 02.01.2019. However, none appeared on behalf of the Applicant – Company. The Court further adjourned the matter by two weeks, and posted the case on 18.01.2019, when it was ordered that in case the Applicant – Company chooses not to enter appearance, the matter would
D be proceeded *ex-parte*. The matter was, thereafter, listed on 23.01.2019, when the following Order was passed:

“Notice was issued in the matter on 12.11.2018, Office report dated 22.12.2018 indicated that notice was served upon the sole Respondent but none had entered appearance. By order dated 02.01.2019, last opportunity was given to the Respondent and it was indicated that if the Respondent chose not to enter appearance, the matter would be disposed of ex-parte. Even then none has entered appearance. Having gone through the matter, we give one more opportunity to the Respondent to enter appearance and make submissions with respect to the merits of the matter. If the Respondent still chooses not to appear, the matter shall definitely be decided ex-parte.”

(emphasis supplied)

G The Applicant – Company remained unrepresented despite service on its authorised representative, on 31.01.2019, and on 05.02.2019, when the matter was taken up for final hearing, and judgment was reserved.

12. During oral hearing on the Re-call Application, a submission was made by the Counsel for the Applicant – Company that Mr. Sanjeev Narayan was not the “principal officer” of the Applicant – Company,
H and hence service could not have been effected upon him.

Section 2(35) defines “principal officer” as follows :

“2. In this Act, unless the context otherwise requires,—

(35) “principal officer”, used with reference to a local authority or a company or any other public body or any association of persons or anybody of individuals, means—

(a) the secretary, treasurer, manager or agent of the authority, company, association or body, or

(b) any person connected with the management or administration of the local authority, company, association or body upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;”

(emphasis supplied)

The term ‘agent’ would certainly include a power of attorney holder. In *State of Rajasthan v. Basant Nehata*¹ this Court held that:

“A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent.”

(emphasis supplied)

Mr. Sanjeev Narayan admittedly being the Power of Attorney holder of the Applicant – M/s. NRA Iron & Steel Pvt. Ltd. for the A.Y. 2009 – 10 was the agent of the Assesse – Company, and hence Notice could be served on him as the agent of the Assessee – Company in this case.

13. The ground taken by Mr. Sanjeev Narayan that even though Notice was served on 13.12.2018, he assumed that they were “some Income Tax Return Documents” lacks credibility. It is difficult to accept that the envelope containing the *dasti* Notice from this Court was

¹2005 (12) SCC 77.

- A considered to be “some Income Tax Return documents”. The deponent does not at all disclose as to when the envelope containing the *dasti* Notice was ever opened.

- Furthermore, the ground urged that the Chartered Accountant was suffering from an advanced stage of cataract, and hence was constrained from informing his clients is again not worthy of credence. The *dasti* Notice was admittedly served on him on 13.12.2018 at his office, which was much prior to his surgery which he states took place on 04.01.2019. Mr. Narayan had sufficient time to inform the Applicant – Company of the proceedings, prior to his surgery.

- C Furthermore, Mr. Narayan appeared before the Income Tax Authorities to represent the Applicant – Company and its sister concerns on various dates prior to his surgery i.e. on 14.12.2018, 21.12.2018, 28.12.2018 and 29.12.2018.

14. Keeping in view the above-mentioned facts and circumstances, this Court is satisfied that the Applicant – Company was duly served through their authorized representative, and were provided sufficient opportunities to appear before this Court, and contest the matter. The Applicant – Company chose to let the matter proceed *ex-parte*. The grounds for Re-call of the Judgment are devoid of any merit whatsoever.

- E 15. The Applicant – Company having failed to make out any credible or cogent ground for Re-call of the judgment dated 05.03.2019, the Application for Re-call is dismissed with no order as to costs.