

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 8929 of 2025

**M. M. Motors & Anr.
versus**

**The Senior Joint Commissioner of Revenue, Berhampore Circle,
WBGST & Ors.**

For the petitioners : Mr. Ankit Kanodia
Mr. Megha Agarwal
Mr. Piyush Khaitan
Ms. Tulika Roy

Appearing as Amicus Curiae : Mr. Sudhir Kr. Mehta, Sr. Adv.

For the State : Mr. Anirban Ray, Ld. GP
Mr. Md. T. M. Siddiqui, Ld. AGP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal
Mr. Debraj Sahu

Heard on : 24.03.2026, 25.03.2026, 30.03.2026 &
31.03.2026

Judgment on : 13th July, 2026

Raja Basu Chowdhury, J:

1. The present writ petition has been filed, *inter alia*, praying for quashing or setting aside of the order under Section 73 of the WBGST/CGST Act 2017 (hereinafter referred to as the "said Act") along with summary thereof uploaded in the form GST DRC 07 on 1st May, 2024 in respect of the tax period 2018-2019. The matter pertains to an

issue whether the order under Section 73 of the said Act, digitally signed on 30th April, 2024 which was uploaded on the subsequent date, i.e., 1st May, 2024 can be said to be validly issued within the period of limitation, having regard to the provisions contained in Section 73(10) of the said Act.

2. To answer the above issue, it is necessary to note down the facts leading to the filing of the instant writ petition. Pursuant to a show cause issued under Section 73(1) of the said Act in respect of the tax period April, 2018 to March, 2019 on 20th December, 2023, a final order under Section 73(9) of the said Act, was digitally signed on 30th April, 2024. The same was uploaded on the portal in form DRC 07 on 1st May, 2024. Being aggrieved, the petitioners preferred an appeal under the provisions of Section 107 of the said Act by making payment of the pre-deposit as is required for maintaining such appeal. The said appeal was disposed of on contest by varying the demand raised in DRC 07. Consequent upon the disposal of the appeal vide order dated 28th February, 2024, a fresh demand in form APL 04 has been issued. The writ petitioners, in the present writ petition does not question the merits of the appeal but has confined the challenge to the competence of the proper officer to pass and upload the order under Section 73(9), beyond the extended time prescribed.

3. Mr. Kanodia, learned advocate representing the petitioners by drawing attention of this Court to the provisions of Section 73(9) of the said Act would submit that the ordinary time period for passing an

order under the provisions of Section 73(9) is three years from the due date for filing return for the financial year, to which the tax has not been paid or short paid or input tax credit wrongfully availed or utilized. By drawing attention of this Court to the notification issued under Section 168A of the said Act dated 31st March, 2023 and 28th December, 2023, he would submit that the time period for passing orders in respect of the financial year 2018-19 had been lastly extended up to the 30th April, 2024. By relying on Section 169 of the said Act and Rule 142 of the WBGST/CGST Rules, 2017 (hereinafter referred to as the “said Rules”), he would submit that upon an order being passed under the provision of the said Act, the proper officer is under an obligation to upload the same in the manner prescribed in Rule 142(5) of the said Rules. Admittedly, in this case the order impugned was uploaded on 1st May, 2024 beyond the time prescribed. Having regard thereto, the entire proceedings stand vitiated as the proper officer never enjoys any power to pass any order beyond the time or the extended time prescribed under Section 73(9) of the said Act. It has been still further submitted that without service of an order on the registered tax payer in the manner prescribed in the Act, and the said Rules, the passing of an order by a proper officer is not complete. He has also placed reliance on the provisions of Sections 2(1)(d), 2(1)(p), 2(1)(t), 2(1)(za) and Section 13 of the Information Technology Act, 2000 to demonstrate the manner in which a digital signature is affixed and how

an electronic record is transmitted, and the manner in which the time and place of dispatch and receipt of an electronic record is determined.

4. In support of his aforesaid contention, he has relied on the following judgments (i) ***Daujee Abhushan Bhandar pvt. Ltd. v. Union of India and others***, reported in (2022) 444 ITR 41 (ii) ***Commissioner of Wealth Tax UP and Anr. v. Kundan Lal Behari Lal***, reported in (1975) 4 SCC 844, (iii) ***Mema Paul & Ors. v. Income Tax Officer, Ward-2 & Ors.***, reported in MANU/MN/0072/2024. (iv) ***Gopala Trading Company v. State of Up & Anr.***, being Writ Tax no. 1286 of 2025, neutral citation 2025:AHC:229995-DB. He has also relied on an unreported judgment delivered by the Division Bench of this Court in the case of ***The Assistant Commissioner of Income Tax Circle 13(1) Kolkata v. Radhakrishna Bimalkumar Pvt. Ltd.***, in AOPT 231 of 2023 on 26th September, 2023, and as also on a judgement delivered by the Coordinate Bench of this Court in the case of ***Messers Sreema Rice Mill v. Union of India & Ors.***, in **WPA 11892 of 2024**. Having regard thereto, he submits that since the adjudication order in this case was not served on the petitioners, the same cannot be enforced specifically on the ground that for an issuance of an order to be complete, the same not only should be signed but also should be set in a motion for the same to be delivered to the tax payer.

5. Mr. Siddiqui, learned AGP and senior advocate on the other hand has drawn the attention of this Court to the order passed under Section 73(9) of the said Act and would submit that the said order has in fact

been digitally signed by the proper officer on 30th April, 2024 at around 21:15:13 hrs. He would submit that since, in terms of the notification issued under Section 168A of the said Act, the time to pass an order under Section 73 for the financial year 2018-19 was extended till 30th April, 2024, there is no irregularity in the proper officer passing such order and enforcing the same by uploading the same on the portal on the following date. While referring to Section 169 of the said Act, he would submit that the said Section deals with the manner of service of the order(s) or notices and does not deal with the scope and effect of passing of an order under the said Act. He further points out that the petitioners while preferring the appeal, did not raise the aforesaid jurisdictional issue. Though, he does not dispute the fact that the jurisdictional issue can always be raised even at a later stage. In the fact as above, the writ petition does not merit consideration and should be dismissed.

6. Mr. Siddiqui has also while distinguishing the judgments relied on by the Mr. Kanodia would submit that all the aforesaid judgments have been delivered in relation to Income Tax Act, 1961, the same does not relate to the provisions contained in the said Act. By placing reliance on a judgment delivered in the case of **Commissioner of Income Tax Gujrat v. Bababhai Pitamber Das (HUF)**, reported in **1993 Supp (3) SCC 530**, he would submit that the Judgment relied on by the petitioners in the case of **Daujee Abhushan Bhandar Pvt. Ltd.** (*supra*) is based on borrowing the definition of the word “issue” from the

Chambers Dictionary. According to him, ordinarily, while interpreting the provisions of a taxing Statute, a Court is required to interpret the provisions of the taxing Statute by reading the same with no additions and no subtractions, and on the grounds of legislative intendments or otherwise. Ordinarily, no foreign interpretation is permitted to be incorporated while interpreting a taxing Statute. In support of his aforesaid contention reliance is placed on the judgment delivered by the Hon'ble Supreme Court in the case of **Chief Commissioner of Central Goods and Service Tax & Ors. v. Safari Retreats Private Limited & Ors.**, reported in **(2025) 2 SCC 523**. He would thus, submit that though in the case of **Commissioner of Wealth Tax UP and Anr.** (*supra*) which explains and follows the judgment delivered in the case of **Banarasi Debi v. ITO**, reported in **AIR 1964 SC 1742** (*supra*) of having observed that the expression 'issued' and the expression 'served' are used as interchangeable terms as per the legislative practices of the country, these words are intended to convey the same meaning, however, having regard to the observations made in the later judgment of **R.K. Upadhyay v. Shanabhai P. Patel**, reported in **(1987) 3 SCC** wherein the Hon'ble Supreme Court while noticing the scheme of the Income Tax Act 1961 (in short, the "1961 Act") was of the view that the 'service' under the scheme of the new Act was not a condition precedent to conferment of jurisdiction on the Income Tax Officer (ITO) and that issuance of the notice by the ITO within the period of limitation was sufficient to vest the ITO with the power to make an order of

assessment and that the requirement of issue of notice is satisfied when the notice is actually issued.

7. This Court had, however, taken the assistance of Mr. Mehta, learned senior advocate, who was appointed as an *amicus curie*. The *amicus curiae* has highlighted the scope of Section 73 and has elucidated on the expression 'issue' as appearing in the sub-sections of Section 73. He has also drawn attention of this Court to the scope of Section 169 of the said Act which provides the manner in which service is to be effected. Scope of Rule 142 of the said Rules has also been highlighted. According to him, an order passed under Section 73 of the said Act has three distinct stages **(1)** making of the order, **(2)** issuance of the order, **(3)** communication of the order. All the three stages serve different legal functions. Firstly, making of the order requires exercise of jurisdiction by the proper officer. Secondly, issuance of the order requires giving effect to the same by way of publication. Thirdly, once, the order is communicated, the same may give rise to other consequences including recovery proceeding(s). The *amicus curiae* has made elaborate submissions on the legal effect of the above three stages which is discussed in the later part of the judgment.

8. Having heard the learned advocates appearing for the respective parties and the *amicus curiae*, and having considered the materials on record, it would transpire that the order under Section 73 of the said Act though digitally signed on 30th April, 2024 was infact uploaded on 1st May, 2024. Having regard thereto, and noting that the scheme of the

said Act provides for prescribed period of limitation in issuing an order under Section 73 of the said Act, it has become necessary to consider (a) whether the proper officer was competent to enforce such an order which was served through the process of upload on the common portal beyond the extended outer period of limitation which was issued within the period of limitation? As ancillary questions having regard to the scheme of the Act which I will elaborate later, it has also become necessary to consider; (b) whether the limitation would apply to the decision or to the act of communicating the decision, though, ordinarily, a decision cannot be enforced without the same being communicated? and, (c) whether for an order to be complete, does the same required to be signed and also to be set in motion for the same to be delivered to the tax payer? In this context, it would be relevant to note that Section 73 and/or its various sub-sections provide for prescribed period of limitation on different stages. To morefully appreciate the same, Section 73 of the said Act is extracted hereinbelow:

“Section 73. Determination of tax [, pertaining to the period up to Financial Year 2023-24,] not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable

thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(2) The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.

(11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

[(12) The provisions of this section shall be applicable for determination of tax pertaining to the period up to Financial Year 2023-24.]

9. As would appear from the above, Section 73(1) of the said Act provides that where it appears to the proper officer that tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or wilful-misstatement or suppression of facts to evade tax, he shall serve a notice on the person chargeable with tax which has not been paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause. As such having regard to Section 73(1) of the said Act, no order under Section 73(9) of the said Act can be passed without a show-cause. Sub-section (2) of Section 73 of the said Act, however, casts yet another restriction. The said sub-section provides that the proper officer shall issue the notice at least 3 months prior to the time limit specified in sub-section (10) for issuance of the order. In other words, even if the limitation period for issuing an order under sub-section (9) of Section 73 has not expired but 3 months period for issuance of such show-cause notice is not available, the matter cannot be proceeded. As sub-section (2) makes it obligatory to the proper officer to issue a notice under sub-section (1) at least 3 months prior to the time limit specified in sub-section (10) for

issuance of order. Sub-section (3) provides that the show-cause may be substantiated by a statement containing the details of the tax and the same having regard to sub-section (4) is to be deemed to be service of notice under sub-section (1) subject to the condition that the grounds relied upon for the tax period other than those covered under sub-section (1) are the same and mentioned in the earlier notice. Sub-section (5) of Section 73 deals with the right of the person chargeable to tax to make payment of the tax along with interest on the basis of its own ascertainment before service of such notice under sub-section (1) or the statement under sub-section (3) as the case may be. In such case, upon receipt of such payment or any such information, the proper officer shall not proceed under sub-section (1) or in the alternative if the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall then proceed to issue a notice under sub-section (1) in respect of the amount which falls short. Sub-section (9) deals with the obligation of the proper officer to determine the amount of tax and penalty upon consideration of the representation if any, on the person chargeable to tax and to issue an order. Sub-section (10) provides that the proper officer shall issue the order under sub-section (9) within 3 years from the due date. None of the provisions of Section 73 of the said Act, however, provide for the manner in which the order is required to be served, the same is completely segregated from the stage of issuance of the order. Section 169 of the said Act, however, identifies the manner in

which service of an order or notice is to be made. To morefully appreciate the same, the said section is extracted hereinbelow:

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.”*

10. While one of the mode of service is by registered or speed post with acknowledgment due, the mode of service also includes sending a communication to the email address provided at the time of registration; publication in the newspaper, or making it available on the common portal. As such, uploading on the common portal is not the only means by which a notice and order can be served. In this context, it may be relevant to note that Rule 142 of the said Rules which is a rule framed in exercise of powers conferred under Section 164 of the said Act provides for the manner in which service of notice under Section 73 amongst other sections, shall be given electronically in Form GST DRC 01. Sub-rule (5) of Rule 142 requires a summary of the order issued under Section 73, amongst other sections of the said Act, to be uploaded electronically in Form GST DRC 07, specifying the amount of tax or interest and penalty as the case may be payable by the person concerns, and sub-rule (6) provides that the order referred to in sub-rule (5) shall be treated as a notice for recovery.

11. In the backdrop as aforesaid, I find that Section 73 employs the expression “issue” in sub-sections (2), (9) and (10) thereof, while the word “service” is used in sub-section (1) of said Section as regards service of the show-cause notice. Though Mr. Kanodia, by placing reliance on the aforesaid has attempted to make out a case that the words “issue” and “service” are interchangeably used and mean one and the same, however, I find that the legislature has used the words “issue” and “service” distinctly having regard to the nature of its

requirement in the various sub-sections of the Section 73 while also providing for the manner in which such a notice and order is required to be served as provided for in Section 169 and under Rule 142 of the said Rules. As has been pointed out by the *amicus curiae*, the term “service” and “issue” have different connotations. Ordinarily, issue of a notice or order means to formally make it out of the authority’s hands by signing, dating and sending the documents for dispatch and completion of secretarial practice. However, the term “service” includes not only issuance of an order but also the effective means taken to deliver or communicate the same to the person intended by legally prescribed modes. As noted above, the mode of service is provided under Section 169 and it deals with term “service” and not the term “issue”. The term “issue” only finds place amongst other relevant sections in Section 73 of the said Act and not under Section 169 which provides for the mode of service. The term “issue” has, however, not been defined under the said Act. The term “issue” and “service” has, however, been defined in Black’s Law Dictionary. To morefully appreciate the same, the aforesaid expressions as defined in the above dictionary are extracted hereinbelow:

“Issue, v. To send forth; to emit; to promulgate; as, an officer issues orders, process issues from a court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. Stokes v. Paschall, Tex. Civ. App., 243 S.W. 611, 614; Blythe v. Doheny, C.C.A. Cal., 73 F. 2d 799, 803”.

“Serve. In Scottech practice. To render a verdict or decision in favour of a person claiming to be an heir to declare the fact of his heirship judicially. A jury are said to serve a claimant heir, when they find him to be heir, upon the evidence submitted to them. Bell”.

Service of process. The service of writs, summonses, rules, etc., signifies the delivering to or leaving them with the party to whom or with whom they ought to be delivered or left; and, when they are so delivered, they are then said to have been served. Usually a copy only is served and the original is shown. Brown”.

12. It may be borne in mind, the said Act was enacted after repeal of the Finance Act, 1994 and the Central Excise Act, 1944. Under Finance Act 1994, the value of taxable services escaping assessment has been dealt with in Section 73 of the Finance Act, 1994. The expressions used in Section 73 of the Finance Act, 1994 to initiating the proceedings is to serve on the assessee a notice containing all or any of the requirements within the period of limitation provided therein, for example within five years or six months as the case may be and the failure to serve notice within the limitation would be treated as time barred. In Section 37(c) of the Central Excise Act which was made applicable to the Finance Act, 1994 also uses the expression service of *decisions, orders, summons etc.* and the affixation on the notice board as the means of service. Therefore, in the cases where correct address of the notices were not available, in such cases notices can be pasted on the notice board and sent at the last known address so as to keep the matter within the jurisdiction. In the present case, under the said Act, the legislature has departed from the previous position and has not used the expression “serve” in Section 73(2), (9) and (10) of the said Act, instead has used the expression “issue”. The mode of service has, however, been shelved to a completely different section, which is Section 169. In this context, it may be relevant to place reliance on the

judgment delivered in the case of **Banarasi Debi** (supra), which dealt with the notice issued under the Income Tax Act, 1922. In the 1922 Act under Section 34(1)(b), the officer is obliged to serve a necessary notice within 4 years which is very similar to the provision under the Finance Act, 1994 and the Central Excise Act, 1994.

13. In this context, it may be noted that the Hon'ble Delhi High Court in the case of **Mayawati v. Commissioner of Income Tax and Ors.**, reported in **[2010] 321 ITR 349**, considering the distinction between the term "issue of notice" and the term "service of notice" has held that it is not necessary that a notice should be served within prescribed period which is for the issuing of the notice.

14. I find that the *amicus curie* has also elucidated on the above placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **Delhi Development Authority v. H. C. Khurana**, reported in **(1993) 3 SCC 196**. The Hon'ble Supreme Court while considering the scope of initiating disciplinary proceedings and whether the same requires service of a charge-sheet had by noting that the requirement in law is satisfied if the charge-sheet is dispatched to the employees and that if the delinquent had evaded the charge-sheet, the same would not effect the jurisdiction, which requires issue of charge-sheet and not service thereof. Another important aspect on which the *amicus curiae* has thrown light is on Section 27 of the General Clauses Act, 1897. The same makes the position clear, as, such section starts with the word "unless a different intention appears". In the case at

hand, it may be noted that the original time limit for the proper officer to issue an order under Section 73(10) was upto 31st December, 2019 in terms of Section 44 of the said Act read with Rule 80 of the said Rules. The due date was, however, extended by notification no. 9 of 2023 dated 31st March, 2023 and notification no. 56/2023, the Central Tax Act dated 28th December, 2023 issued under Section 168A of the said Act and which ultimately provided for the time period to be extend upto 30th April, 2024. It is not in doubt that an order in question was digitally signed on 30th April, 2024. The said order appears to have been uploaded on the following date i.e. on 1st May, 2024. I find that Mr. Kanodia, learned advocate representing the petitioners by relying on Rule 142(5) of the said Rules has emphasized that since, the said Rules mandates the proper officer to upload the summary of the order passed under Section 73 in Form GST DRC 07 and since, sub-section (2) of Section 169 of the said Act provides one of the mode of service to be by uploading the said order, the date of service of the order in the mode and manner prescribed under the said Act would mean the date of the order; as according to him, service of the order under Section 73 cannot be completed without uploading the same in Form DRC 07, and the order is deemed to have been issued on the date when service thereof is completed. However, such contention of Mr. Kanodia, does not appear from a plain reading of Section 73 of the said Act. When the legislature has used a particular expression in an Act which was introduced by repealing the Finance Act, 1994 and the Central Excise

Act, 1944 and where in both the previous Acts, only the limitation period was interlinked with the term “service” which has intentionally been omitted by the legislature, the arguments advanced by ignoring such omission, in my view, cannot be the correct interpretation of the term “issue” and “service”. In this context, I may also note that Mr. Kanodia placed strong reliance on the judgment delivered pertaining to issue of notice under Section 148 of the 1961 Act. To understand the scope of issuance of notice under Section 148 of the 1961 Act, it must be noted that on the issuance of a notice under Section 148 of the 1961 Act, reassessment proceedings do not take place. Section 149 of the 1961 Act, however, creates a specific bar in issuing a notice unless, such notice is within the time specified therein; while reassessment is done under section 147 of the 1961 Act. I find that the Division Bench of this Court while considering the scope and effect of issuance of a notice under Section 148 of the 1961 Act, in the judgment delivered in the case of ***Assistant Commissioner of Income Tax, Circle 13(1) Kolkata*** (supra), while proceeding on the premise that the notice issued under Section 148 of the 1961 Act could not have been given effect to unless the same was communicated within the period of limitation, has treated the notice in such case, to be barred by limitation.

15. Similarly, in the judgment relied on by the petitioners in the case of ***Daujee Abhushan Bhandar Pvt. Ltd.*** (supra), the Hon’ble Allahabad High Court had considered the issuance of a notice under

Section 148 of the 1961 Act. It is in this context that the Hon'ble Allahabad High Court while also noting the scope and the effect of the Information Technology Act, 2000 had noted that unless, the notice under Section 148 of the 1961 Act is sent, mere act of digitally signing the notice cannot be construed to be an issuance of the said notice. The judgment relied on in the case of **Banarsi Debi & Anr.** (*supra*) which was explained in the case of **Commissioner of Wealth Tax UP & Anr.** (*supra*) which note that the expressions "issue" and "served" have been used in inter-changeable terms, as the legislative practice of the country had been to intend the use of the word 'issued' as served. The above position has since been further explained in a later judgment of the Hon'ble Supreme Court in the case of **R.K. Upadhyay** (*supra*) wherein it has been held that a clear distinction has been made out between issue of notice and service of notice under the 1961 Act. The Court further went on to add that Section 149 prescribes the period of limitation and provides that no notice under Section 148 shall be issued after the prescribed period had lapsed. Although, Section 148(1) makes service of notice a condition precedent, the requirement of the notice is satisfied when the notice is actually issued, since service is not a condition precedent for the ITO to deal with the matter but to the making an order of assessment. To morefully appreciate the above, paragraph 2 of the above judgment is extracted hereinbelow:

"2. *The High Court has quashed the notice by accepting the assessee's contention that the action of the Income Tax Officer was barred by limitation prescribed by the Act. There is no dispute that the notice in this case under Section 147(b) of the Act was issued by registered post*

on March 31, 1970, and was received by the assessee on April 3, 1970. To the facts of the case. Section 147(b) of the Act applies. The two relevant provisions are in Sections 148 and 149 of the Act which provide:

148. (1) Before making the assessment, reassessment or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

(emphasis supplied)

(2)***

149. (1) No notice under Section 148 shall be issued,

(a)***

(b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.”

The High Court relied upon the decision of this Court in the case of *Banarsi Debi v. ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] where the validity of a notice under Section 34(1) of the Income Tax Act, 1922 and the scope of Section 4 of the Income Tax (Amendment) Act of 1959 by which sub-section (4) was introduced into Section 34 were considered. The Court indicated, keeping the provisions of Section 34 in view, that there was really no distinction between “issue” and “service of notice”. Section 34, sub-section (1) as far as relevant provided thus:

“34. (1) If—

(a)***

(b) ... he may in cases falling under clause (a) at any time within 8 years and in cases falling under clause (&) at any time within four years of the end of that year, serve on the assessee,... and may proceed to assess or reassess such income....

(emphasis supplied)

Section 34 conferred jurisdiction on the Income Tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundations of jurisdiction. The same view has been taken by this Court in *J.P. Janni, ITO v. Induprasad D. Bhatt* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 72 ITR 595] as also in *CIT v. Robert J. Sas* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 48 ITR 177]. The High Court in our opinion went wrong in relying upon the ratio of *Banarsi Debi v. ITO* [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in Section 34 of the 1922 Act has been spread out into three sections, being Sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between “issue of notice” and “service of notice” under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under Section 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitation, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of Section 148(1) is that reassessment shall not be made until there has been service. The

requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi v. ITO [AIR 1964 SC 1742 : (1964) 7 SCR 539 : 53 ITR 100] . As the Income Tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income Tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.”

16. The factum of issuance of a notice under Section 148 of the 1961 Act is sufficient to attract the jurisdiction, though the requirement of Section 148 to make reassessment is to serve the notice, for which no limitation has been provided, as has been reiterated in the case of **Mayawati** (supra).

17. Independent of the above, I also find that both, the learned advocates for the petitioners as also for the respondents have placed much reliance on the method of authentication of an order issued under the said Act. In this context, I note that the method of authentication is provided in Rule 26 of the said Rules which provides that all applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 (Act 21 of 2000), or verified by any other mode of signature or verification as notified by the Board in

this behalf, and sub-rule (3) of the said Rule provides that all notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000, or verified by any other mode of signature or verification as notified by the Board in this behalf.

18. This apart, though by placing reliance on Section 2(1)(d), 2(1)(p), 2(1)(t), 2(1)(za) and Section 13 of the Information Technology Act, 2000, the petitioners have attempted to borrow the provisions of the Information Technology Act to demonstrate how service of an order is required to be effected and when an order is deemed to be served by relying on Section 13 thereof. I, however, find that the said Act does not borrow the provision of Section 13 of the Information Technology Act, 2000 on the issue of service, rather, the only reference to Information Technology Act is with regard to the authentication of an order which is required to be done in terms of the said Act. Rule 26(3) of the said Rules provides the manner of authentication. It is not in dispute that the order was authenticated in the manner provided by the statute, which is also apparent from what has been stated hereinabove. In my view, the statutory scheme of the said Act appears to distinguish between the act of issuing the orders under Section 73(9) and the act of serving the order, which is provided for in Section 169 of the said Act.

While the former conforms the completion of adjudicatory function within the prescribed period of limitation, the latter concerns the manner in which the order is required to be communicated. Since, the provision of limitation has been attached to the issuance of a show-cause notice under Section 73(1) and an order under Section 73(9) of the said Act, without providing for limitation in the manner of service of such order, in my view, the petitioners cannot be permitted to impeach the order on the ground that the order though was issued within the period of limitation was served after the statutory period for making the orders. If the statute does not mandate for service of an order within the period of limitation, the same cannot, in my view, be treated to be a mandate for service of the order within the period of limitation, especially when, the legislature while repealing the previous amendment has moved forward and chosen to make a distinction between the words, “issue” and “service”. The judgments relied on by Mr. Kanodia in the case of ***Daujee Abhushan Bhandar Pvt. Ltd.*** (*supra*) deals with the notice under Section 148 of the 1961 Act. While deciding such matter, their Lordships did not consider the provisions of the Finance Act 1994, the Central Exercise Act and the said Act. Similar Consideration applies for the case of ***Kundan Lal Behari Lal*** (*supra*) and the case of ***Mema Paul & Ors.*** (*supra*). The above judgments do not assist the petitioners. Insofar as the judgment delivered in the case of ***Messers Sreema Rice Mill*** (*supra*) is concerned, the same deals with the right of a tax payer to prefer the

appeal, upon such order being uploaded in form DRC-07. The above judgment also does not deal with the scope of issuance of an order under Section 73(9) or 74(9) of the said Act. Insofar as the unreported judgment delivered by the Division Bench of this Court in the case of ***The Assistant Commissioner of Income Tax Circle 13(1) Kolkata*** (supra) is concerned, the said judgment dealt with the issue as to whether the new regime for assessment or reassessment or recomputation in respect of income escaping assessment under Section 147, by virtue of a notice issued under Section 148 of the Income Tax Act, 1961 as substituted by the Finance Act, 2021 with effect from 1st April, 2021 by preceding such notice with an opportunity to the assessee to show-cause, would apply in the facts of such case. Though the notice in such case was signed on 31st March, 2021, the same was uploaded later and as such by relying on the case of ***Union of India v. Ashish Agarwal***, reported in (2022) 138 taxmann.com 64 (SC) and noting that by virtue of the above judgment of ***Ashish Agarwal*** (supra), the Hon'ble Supreme Court had extended the time by 30 days from the date of such judgment, held that the email dispatched on 1st April, or thereafter is barred by limitation. Unlike the said Act, the Income Tax Act, 1961 as substituted by the Finance Act, 2021 provides for limitation not only at the stage of the decision to issue the notice for reassessment under Section 148, but also to pass an order under Section 148(d) of the 1961 Act. The two acts are entirely different and as rightly submitted by Mr. Siddiqui no foreign interpretation is

permitted while interpreting a taxing statute. As it is well settled that a judgment is an authority for what it decides and a slight variation in facts may alter the final outcome. In any event, the distinction between the term '*issue*' and '*service*' did not fall for consideration in such judgement. I am afraid, the above judgment does not assist the petitioners.

19. Admittedly, in this case, the order was issued within the period of limitation, the uploading of the order on the following date, following the issuance of the order does not render the same void or barred by limitation. Similarly, since for the purpose of appeal, the date of service of order is treated to be the effective date, the same does not alter the date of making (issuance) of the order.

20. To reiterate it is also well settled that while interpreting a taxing statute, no foreign interpretation is permitted to be incorporated as has been held in the case of ***Safari Retreats Private Limited & Ors.*** (*supra*).

21. Accordingly, the first issue is answered by holding that an order passed within the period of limitation would be enforceable only when the same is served. The second issue is answered by observing that the period of limitation is confined to the issuance of the order and not on the service thereof and lastly on the third issue, since, the act of making an order is distinct from the act of service having regard to the scheme of the said Act as noted above, the factum of *issue* cannot be

interlinked to *service* for the order to be complete. Accordingly, the writ petition fails and the same is dismissed.

22. However, before concluding, I must record a note of appreciation on the sincere efforts and the lucid submissions of the *amicus curiae* who had ably assisted the Court in delivering this judgment.

23. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)