

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 23003 of 2023

Arati Behera

.....

Petitioner

Mr. P.K. Harichandan, Advocate

Vs.

*State Tax Officer, CT & GST,
Keonjhar & another*

.....

Opposite Parties

Mr. Sunil Mishra, Standing Counsel (Revenue)

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE MURAHARI SRI RAMAN

ORDER

27.07.2023

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Harichandan, learned counsel for the petitioner and Mr. Sunil Mishra, learned Standing Counsel for Revenue.

3. The petitioner has filed this writ petition seeking to quash the order dated 24.05.2023 passed by opposite party no.1 under Annexure-4 series and to direct the opposite parties to give opportunity of hearing before passing the order under Section 73 of the Odisha Goods & Services Tax Act, 2017.

4. Mr. Harichandan, learned counsel for the petitioner contended that sub-section (4) of Section 75 makes it clear that whenever an assessee is chargeable with tax and penalty and makes a request in writing for opportunity of hearing, such an opportunity should be granted to him. According to him, though the petitioner made an application under Rule 142 (4) of the OGST Rules, 2017 on

29.04.2023 under Annexure-3 seeking 30 days' time for submission of reply against Notice in Form GSTDRC-01, dated 31.03.2023 under Section 73 of the said Act for the tax period July, 2017 to March, 2018 vide Reference No. ZD210323019782S dated 31.03.2023, instead of granting time, the order impugned has been passed under Annexure-4, which is arbitrary, unreasonable, contrary to provisions of law and has been passed without giving opportunity of hearing to the petitioner. More so, the statute requires that three opportunities should be given to the assessee to furnish his reply, but in the present case, no such compliance of the statute has been made by the authority concerned.

5. Mr. Sunil Mishra, learned Standing Counsel for the Revenue vehemently contended that though the petitioner asked for time for filing his reply, but in Form GSTDRC-06 (reply to show cause notice) at Sl. No.7 with regard to "option for personal hearing" he has put tick mark in the 'No' column. Therefore, he contended that the petitioner does not want to have a personal hearing. Therefore, the order so passed under Annexure-4 is well justified and does not require any interference by this Court.

6. Having heard learned counsel for the parties and after going through the record, it appears that when the petitioner was called upon to give his reply, he sought for time vide his application dated 29.04.2023 under Annexure-3 seeking for a period of 30 days, so that he will produce relevant document and submit his reply against GSTDRC-01 for the tax period July, 2017 to March, 2018 vide Reference No. ZD210323019782S dated 31.03.2023. In the said request for grant of time, at Sl. No. 7, in the "option for personal hearing", though the petitioner put tick mark in the 'No' column, but

that is meant for that time petition itself. Therefore, once the petitioner is asking for time, there is no need for mentioning of any personal hearing in the petition under Annexure-3. However, the same should have been acted upon by the authority by giving opportunity of hearing as per the statute. The statute requires that at least three opportunities should be given to the assessee. The same has not been complied with. On the other hand, when the request is made for grant of 30 days' time vide application dated 29.04.2023 under Annexure-3, the order under Section 73 has been passed on 24.05.2023 under Annexure-4, which is before expiry of the 30 days' period. The reliance placed to the case of this Court in the case of ***Serajuddin and Co. v. Union of India***, 2020 (34) G.S.T.L. 24 (Ori), wherein this Court at paragraphs-5 and 6 observed as follows:-

“5. A perusal of sub-section (4) of the Section 75 of “the Act” makes it clear that whenever an assessee, chargeable with tax and penalty and makes a request in writing for opportunity of hearing, such an opportunity should be granted to him. Here, admittedly though a request was made on 4-12-2019 under Annexure-4 for personal hearing, however, without granting the same the impugned orders have been passed. Further, despite receipt of the request dated 3-12-2019 under Annexure-4 for grant of additional time for filing show cause, without passing any order on the same, the impugned orders have been passed.

6. In such background, we have hesitation in coming to a conclusion that the impugned order under Annexure-5 Series have been passed in violation of the statutory requirements as indicated above. Therefore, we quash the impugned orders and remand the matter back to State Tax Officer, CT & GST Circle, Barbil-opposite party no. 4 to proceed with the matter strictly in accordance with law. The petitioners are also directed to cooperate in the proceeding.”

7. In view of such position, this Court has no hesitation to hold that the opposite parties have shown haste in passing the order dated 24.05.2023 under Annexure-4, though the adjudicating authority had to

give opportunity of hearing to the petitioner in conformity with the provisions of law. In absence of compliance of such provision, the order so passed on 24.05.2023 under Annexure-4 cannot be sustained in the eye of law and liable to be quashed and is hereby quashed. The matter is remitted back to the adjudicating authority to pass appropriate order under Section 73 of the Act by affording opportunity of hearing to the petitioner.

8. The writ petition is accordingly disposed of.

Arun



(DR. B.R. SARANGI)
JUDGE

(M.S. RAMAN)
JUDGE