

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT PETITION No.6859 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. G.Narendra Chetty, learned counsel for the petitioner and Ms. B.Sapna Reddy, learned counsel for the 1st respondent. We have also heard Mr. G.Praveen Kumar, learned Deputy Solicitor General of India for the 2nd respondent.

2. This writ petition has been filed assailing legality and validity of the order-in-original dated 02.11.2022 passed by the 1st respondent confirming demand of Rs.2,82,51,323.00 in terms of Section 73(2) of the Finance Act, 1994 besides confirming levy of interest and imposition of penalty under different provisions of the Finance Act, 1994.

3. Petitioner before us is a special class contractor engaged in the business of executing road construction works

of Government Departments. He is a service provider and registered as such under the Finance Act, 1994. Show cause notice dated 18.10.2021 was issued to the petitioner by the 1st respondent alleging non-payment of service tax by the petitioner on the taxable services provided for the period 2016-17 and 2017-18 (upto June, 2017). It is stated that the aforesaid show cause notice was e-mailed to the petitioner, to which petitioner sought for time to file reply on 18.11.2021.

4. It is contended by learned counsel for the petitioner that after 18.11.2021, petitioner did not receive any intimation from the 1st respondent including notice for personal hearing. Ultimately the impugned order was passed which has been impugned in the writ petition on the ground of being in violation of the principles of natural justice.

5. Ms. Sapna Reddy, learned counsel for respondent No.1 submits on the basis of written instructions that notice of personal hearing was given to the petitioner in the address mentioned by him in the Goods and Services Tax (GST) record on 26.05.2022. However, when sent by registered post, the

notice was returned unserved. She submits that petitioner did not inform the office of respondent No.1 about change of address, in which event the notice of personal hearing could have been sent to the changed address of the petitioner.

6. Be that as it may, paragraph 5 of the impugned order reads as under:

“5. The service provider had neither submitted reply to the Show cause Notice nor attended the personal hearing. The Service Provider requested for time to reply with the relevant documents vide their letter dated 18.11.2021. However, they have not submitted any documentary evidence relevant to the instant case. The personal hearing intimation sent to the service provider was returned undelivered by the postal authorities. Hence, the adjudication has been taken up on the basis of data/documents available on record.”

7. Admittedly, insofar personal hearing is concerned, notice was not served upon the petitioner. Even if we accept the contention of learned counsel for respondent No.1, then also we fail to understand as to why the notice for personal hearing was sent by registered post when the show cause notice was sent through e-mail.

8. Be that as it may, for failure of the 1st respondent to provide an opportunity of personal hearing to the petitioner, we are of the view that the impugned order stands vitiated. However, now that petitioner is aware of the allegations made by the 1st respondent, the impugned order may be treated as the show cause notice.

9. Accordingly and in the light of the above, we pass the following orders:

- (i) Order-in-original dated 02.11.2022 passed by the 1st respondent is hereby set aside.
- (ii) Though we have set aside the order-in-original dated 02.11.2022, the same shall now be construed to be the show cause notice.
- (iii) Petitioner shall file reply thereto within a period of four (04) weeks from today.
- (iv) Once reply is submitted by the petitioner as above, respondent No.1 may proceed afresh

and thereafter pass fresh order in accordance with law after giving due opportunity of hearing to the petitioner within a period of eight (08) weeks from the date of receipt of the reply.

- (v) We however make it clear that if there is default on the part of the petitioner in submitting reply, it would be open to the 1st respondent to pass such order as may be deemed fit and proper.

10. Writ Petition is accordingly disposed of. However, there shall be no order as to costs.

11. Miscellaneous applications pending, if any, in this Writ Petition shall stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 14.03.2023
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