

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 17506 of 2022**

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M/S EAGLE FIBRES LIMITED

Versus

STATE OF GUJARAT

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Appearance:

MR KARANKUMAR J SUKAWALA(10263) for the Petitioner(s) No. 1,2

MR MUKUND KUMAR CHOUHAN(10259) for the Petitioner(s) No. 1,2
for the Respondent(s) No. 1

MR SIDDHARTH RAMI, AGP for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 12/01/2023

ORAL ORDER

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Rule returnable forthwith. Learned Assistant Government Pleader Mr. Siddharth Rami waives service of notice of rule for and on behalf of the respondents.

2. This is a petition seeking direction to set aside the ex-parte order passed in FORM GST DRC-07 dated 14.04.2022 passed by the respondent no.2 without following the principles of natural justice. The facts leading to the present petition are as follows:-

2.1. The petitioner no.1 M/s. Eagle Fibres Limited is a manufacturer of polyester yarn who is registered with the GST Department having GSIN 24AAACE5085C1Z1.

2.2. A show cause notice was issued in Form GST DRC-01 by the respondent no.2 on 14.02.2022 and uploaded on the portal. No hard copy of the show cause notice was served upon the petitioner. The excise clerk of the factory was on leave for 30 days and after his return, he found that show case notice has been served on portal and forwarded the same to the learned advocate who was to prepare the reply. In the meantime, the respondent no.2 passed an order in Form GST DRC-07 on 14.04.2022.

2.3. On the ground that the mandatory opportunity of personal hearing was not granted as required under Section 75(4) of the CGST/SGST Act, 2017, the petitioner is before Court seeking to challenge the order passed by the respondent relying on various decisions of this Court which insist on grant of opportunity of personal hearing and also interpreting Section 75(4) of the CGST/SGST Act when the additions are made prejudicial to the petitioner, with the following prayers:-

“(A) that this Hon'ble Court be pleased to issue a writ of Certiorari or any other writ, order or direction under Article 226 of The constitution of India after going the validity and legality there of quash the order DRC 07 Reference No. ZD2404220100580

dated 14/04/2022 (Annexure-B) issued by Respondent No. 2;

(B) that this Hon'ble Court be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction under Article 226 of the constitution of India after going into the validity legality thereof, direct re-adjudication of the Show Cause Notice Form GST DRC-01 Reference No. ZD2402220082451 dated 14/02/2022 (Annexure - A) after following the Principles of Natural Justice.

(C) that this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction, ordering and directing the Respondent No.- 2 by himself, his subordinates, servants and agents, pending disposal of the present Petition not to recover amount imposed vide impugned order dated 14/04/2022 and stay the execution and other proceeding thereof.

(D) For ad- interim reliefs in terms of prayers (a), (b) and (c) above.

(E) For costs of this Petition,

(F) For such and other reliefs as the nature and circumstances of the case may require."

3. This Court (Coram: Mr. N.V.Anjaria & Mr. Bhargav D. Karia, JJ.) issued notice for final disposal on 14.09.2022. Today, when the matter was taken up, we have heard learned advocate Mr. Mukund Kumar Chouhan appearing for the petitioners and learned Assistant Government Pleader Mr. Siddharth Rami for the respondent - State.

4. It is not disputed that the personal hearing had not been granted in the instant case. It is an ex-parte order in Form GST DRC-07 passed on 14.04.2022 by making the addition of huge amount of tax, interest and penalty of Rs. 2.40 crores (rounded off).

5. The decision of this Court in case of **Graziano Trasmissioni India Pvt. Ltd. vs. State of Gujarat [2022(66) G.S.T.L. 38 (Guj.)]** and **Alkem Laboratories Ltd. vs. Union of India [2021(46) G.S.T.L. 113 (Guj.)]** and other decisions will need to come to the rescue of the petitioner which insist on providing the opportunity of personal hearing when any adverse decision is contemplated, even without any request for personal hearing on the part of the party concerned.

5.1. In case of **Graziano Trasmissioni India Pvt. Ltd.** (supra), the Court held and observed thus:-

“11. At the outset, we would like to reproduce Section 75 of the CGST Act, 2017, which is as under:

“Section 75 : General provisions relating to determination of tax.

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall

be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or subsections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no

demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or subsection (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of

self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act."

12. Section 75(4) of the CGST Act, 2017 provides that an opportunity of hearing is to be provided where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person.

13. The stand on the part of the Department is that the Online Portal mode was chosen by the petitioners, which had resulted in the entire matter having been proceeded Online. The opportunity of hearing was not granted since the same was not requested for. However, while so arguing, the provision of Section 75(4) has been missed out. Even without any request having been made on the part of the party concerned, when any adverse decision is contemplated, personal hearing is a must. Hence, the same is missing in the instant case and the request on the part of the petitioners is to remand the matter by directing the respondents to consider the matter afresh by giving the fullest opportunity to the parties to present their case.

14. Without entering into the merits of the matter, only on the ground of non-availment of opportunity of personal hearing, we deem it appropriate to quash the impugned Orderin-original No. ZD240322019756J dated 25.03.2022 and two (2) Summary Orders in Form DRC-07 passed by respondent No.3. The respondent No.3 shall avail the opportunity of personal hearing on 18.07.2022. If any

document/s are needed to be furnished, let the same be done on or before 13.07.2022 physically. No adjournment shall be sought for by the petitioners. None of the observations will come in the way of the parties in finally deciding the matter. Both the petitions stands disposed of accordingly. Direct service permitted."

6. Accordingly, the petition is **ALLOWED** quashing and setting aside the impugned order of assessment with all consequential proceedings. Rule is made absolute to the aforesaid extent. The respondent is at liberty to initiate the proceedings from the stage where it had been left, by affording reasonable opportunity of hearing to the petitioner on intimating him even physically.

7. We noticed that it is only through portal that the assessee is being served. Let the service be also effected physically through RPAD and thereafter, affording the reasonable opportunity, the order shall be passed in accordance with law.

8. Petition is disposed of accordingly.

(SONIA GOKANI, J)

(SANDEEP N. BHATT, J)

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