

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14347 of 2022

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M/S HITECH SWEET WATER TECHNOLOGIES PVT. LTD.
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

NOTICE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 06/10/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Heard learned advocate Mr. Karankumar J. Sukawala for the petitioners and learned Asst. Government Pleader Mr. Trupesh Kathiriya for the respondents.

2. By filing this petition under Article 226 of the Constitution, the petitioner has challenged the orders, each dated 19.04.2022 in respect of financial years 2017-18, 2018-19 and 2019-20, whereby with respect of three years, the competent authority of the respondent called upon the petitioner to pay amount of tax under Section 73(9), to pay interest under section 50 and further to pay 10% penalty under

Section 73(9) of the Gujarat Goods and Service Tax Act, 2017. It was provided that unless the said amounts are paid within 30 days, the authorities will proceed to recover by taking resort to Sections 78 and 79 of the Act.

2.1 The petitioners have also challenged the show-cause notices dated 13.03.2022 for the same three financial years, which notices were basis for passing the aforesaid orders.

3. Petitioner M/s. Hitech Sweet Water Technologies Pvt. Ltd. is a manufacturer of water filter machines. It is registered under the Goods & Services Tax Act and files monthly returns of sales to discharge the tax liability regularly, as stated by the petitioner.

3.1 Three show-cause notices for the respective years in form GST DRC-01 dated 13.03.2022 came to be issued to the petitioner for the years 2017-18, 2018-19 and 2019-20 and amount of Rs.5,46,79,672/-, Rs.2,33,65,984/- and Rs.1,35,60,109/-, was claimed from the petitioner.

3.2 Thereafter, the authorities passed final orders determining amounts of Rs.6,88,92,903/-, Rs.2,36,64,166/- and Rs. 1,09,47,450/- for the three respective years.

3.3 Challenge to the orders and preceding show-cause notices are based on the ground that the order came

to be passed in gross violation of principles of natural justice inasmuch as the petitioner was not granted opportunity of being heard. By placing reliance on different judgments including **M/s. Alkem Laboratories Ltd. Vs. Union of India [2021 (46) GSTL 113 (Guj.)]**, it was submitted that when adverse order was passed without giving opportunity of personal hearing, it was liable to be quashed.

3.4 Sub-sections (4) and (5) of Section 75 of Central Goods & Service Tax Act, 2017, which the reliance is placed by the petitioner, reads as under,

"(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."

4. There is no gainsaying that the impugned orders came to be passed without extending opportunity of personal hearing to the petitioner. In respect of the orders relating to three assessment years, the petitioner was not heard. While it is true that in reply in prescribed form given by the petitioner, in

response to show-cause notice, the petitioner has indicated that he did not opt for personal hearing.

4.1 Learned advocate for the petitioner submitted that it was by a sheer mistake and petitioner is required to have right to personal hearing exercised, so that it can put its case properly in response to the show-cause notice.

4.2 Learned AGP could not dispute the proposition enunciated from the decision in **M/s. Alkem Laboratories Pvt. Ltd. (supra)** relied by the learned advocate for the petitioner. Learned AGP in totality of the facts and circumstances, acted fairly to make a statement before the Court that the competent authority-respondent, would be giving personal hearing to the petitioner, which shall be done within three weeks from today and thereafter pass afresh orders in connection with the reassessment order.

5. Only on the ground of non-compliance of principles of natural justice in form of not giving opportunity of personal hearing and in order that the competent authority is enabled to decide afresh as per the statement of the learned AGP, the three impugned orders dated 19.04.2022 (Annexures-C-1 to C-3 in the petition) issued by respondent no.2 are set aside.

5.1 The competent authority, respondent, will give

opportunity of personal hearing to the petitioner within three weeks from today and pass in accordance with law, fresh orders within two weeks from the date of affording such personal hearing.

6. This Court has not expressed any opinion nor has gone into the merits of the case of the either side.

7. Petition is allowed to the aforesaid extent and in the same terms. Direct service is permitted.

(N.V.ANJARIA, J)

(BHARGAV D. KARIA, J)

BIJOY B. PILLAI

