

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 16857 of 2022**

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M/S MANJEET COTTON PVT. LTD.

Versus

COMMISSIONER OF STATE TAX

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Appearance:

MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1

for the Respondent(s) No. 2,3,4,5,6

ADVANCE COPY SERVED TO MR TRUPESH KATHIRIYA,

ASST.GOVERNMENT PLEADER/PP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE SONIA GOKANI**

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 15/12/2022

ORAL ORDER**(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)**

1. Issue Notice, returnable forthwith.

Learned AGP waives service of notice for
and on behalf of the respondent-State.2. Petitioner is before this Court under
Article 226 of the Constitution of India
seeking to challenge the action of the
respondent authority on the ground that the
same is violative of principle of natural

justice.

3. According to the petitioner, who is having his principal place of business at Ahmedabad and having GST Registration being engaged in the business of trading of Cotton Bales, Cotton Yarn, Cotton Seed Oil Cake, etc. received a show cause notice under Section 73 of the Central Goods and Service Tax/Gujarat Goods and Service Tax Act ('the CGST Act' and GGST Act' hereinafter) along with summary thereof in the Form GST DRC-01 on 13.01.2022 issued by the respondent No.3.

3.1 It was alleged that the petitioner was supplied nil rated or exempted supply, but he had not reversed the ITC related to the said exempt supply as per Section 17(2) of

the CGST Act read with Rule 42 of the Central Goods and Service Tax Rules, 2017 and Gujarat Goods and Service Tax Rules, 2017 ('the CGST/GGST Rules' hereinafter). The demand was made of Rs.36,15,696/- with interest at the rate of 24%p.a.

3.2 The petitioner submitted a reply on 26.01.2022 in Form GST DRC-06 wherein he requested to grant the adjournment of 30 days to submit a detailed reply in response to the show cause notice.

3.3 The adjournment was granted by the respondent No.3 of 15 days and asked the petitioner to reply on or before 11.02.2022. The petitioner could not file the reply in response to the said show cause notice. According to him, because on

account of last date to file GST return in Form GSTR-1 for the month of January 2022, he was handicapped.

3.4 The search proceedings under Section 67(2) of the CGST Act at the registered premise of the petitioner took place on 17.02.2022, the summons had been issued and on 19.02.2022, the petitioner's statement had been recorded. On 21.02.2022, the petitioner reversed the ITC accounting to Rs.1,19,149/- along with the interest pertaining to the year 2017-18 to 2020-21.

3.5 The petitioner thought that the issue was resolved as the officer of the GGST has issued show cause notice and another officer of the said department initiated the search proceedings as he had reversed

the tax along with the interest and penalty. According to him, it is only in the month of June, when the recovery had come and the respondent had debited the electronic credit ledger against the demand raised vide its order dated 21.02.2022, he came to know of this. Notice was also issued under Section 79(1)(c) of the CGST Act, the Manager of the Bank was asked to pay the amount of Rs.13,74,981/- on behalf of the petitioner. He froze the debit transactions from the Bank account. The petitioner, therefore, is before this Court seeking the following reliefs:

“23.

(a) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction quashing and setting aside the order u/s.73 of the CGST Act issued by the respondent No.3 with a direction to adjudicate the matter afresh after providing an opportunity of hearing;

or Alternatively

To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction directing the respondent No.6 to admit the appeal and hear the same on merits and pass the judicious order in stipulated time.

(b) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction directing the respondent to re-credit the amount recovered illegally from Electronic Credit Ledger of the petitioner;

(c) To issue writ of or in the nature of a mandamus or any other appropriate writ, order or direction directing the respondent No.5 to inform the Banks to remove the lien over the amount of the petitioner and let the petitioner operate its Bank account;

(d) to issue order(s), direction(s), writ(s) or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice;

(e) to award Costs of and incidental to this application be paid by the Respondents.”

4. We have heard the learned advocate, Mr.Avinash Poddar appearing for the petitioner and learned AGP, Mr.Trupesh Kathiriya.

5. Learned advocate, Mr.Avinash Poddar has not disputed the fact that the request is made for 30 days for filing the reply on 26.01.2022 on the part of the petitioner. He also has agreed that 11.02.2022 was the date granted to him, however, he has not filed his reply nor had he appeared and no adjournment thereafter had been asked for. He does not dispute also the subsequent chronological events which had taken place. He heavily relied on the decision of this Court rendered in Special Civil Application

No.11332 of 2022 with Special Civil Application No.11335 of 2022 (Annexure R) were on 23.06.2022 analyzing the provision of Section 75 (4) of the CGST Act, the Court has held that the opportunity of hearing has to be provided under the said provision where a request is received in writing from the person chargeable with the tax and penalty or where an adverse decision is contemplated against the person.

5.1 He has also urged that even without any request on the part of the party, when any adverse decision is contemplated, the personal hearing is a must as has been directed by this Court, which is missing in the instant case.

6. Learned AGP, Mr.Trupesh Kathiriya has urged that the portal itself is indicative of the fact that the adjournment was granted on 11.02.2022 and also the personal hearing was granted. However, he has neither filed his reply on 11.02.2022 nor has he appeared. That had thereafter led the officer concerned to pass the order on 21.02.2022 and that too, after the search was conducted on 17.02.2022. He has urged that there was a sufficient compliance of the directions. This was not the case where the officer concerned had not availed the opportunity of hearing. The party concerned did not avail it and hence, the officer cannot be blamed.

7. Having thus heard the learned advocates on both the sides and also having considered the material on the record, this Court notices that this is not the case where the Court would like to employ the ratio laid down in case of ***Graziano Transmission India Private Limited vs. State of Gujarat*** in Special Civil Application No.11332 of 2022. As the facts were completely different and here as can be noticed, his request for adjournment had been acceded to not for 30 days, but for 15 days. The online portal also is indicative of the fact that it was for both adjournment and the personal hearing, however, on 11.02.2022 admittedly, neither the response was given in writing nor had the petitioner appeared in person. He also never bothered thereafter

to know as to what had happened on 11.02.2022.

8. It is also a matter of record that search was conducted at the official premise on 17.02.2022 and consequent upon the said search not only the petitioner, but some other employees were also called by the officer concerned for recording the statement and eventually on 21.02.2022, the order came to be passed which is impugned. He has reversed credit as has been detailed in the petition and that according to him was the reason for him to believe that everything was over till he received the communication from the Bank on 21.06.2022 where electronically the demand had been raised and the Bank was asked to adjust his

demand.

8.1 Even if, there was a search and there were consequent actions initiated against the petitioner, he could not have been naive enough not to be bothered about the show cause notice which was issued against him and for which, he had already asked for the adjournment, as every such action would be requiring the logical conclusion. However, it is only in the month of June, he woke up from his slumber or may be it was a limited understanding of the act which had resulted into his not pursuing the matter before that. However, for that the officer concerned cannot be held responsible, who already had availed him an opportunity of hearing.

9. Be that as it may, for present, the petitioner is desirous of going to the Appellate Authority for questioning and challenging the assessment which has been finalized and that being his right, if he has missed out on the limitation, condoning this period of limitation in the given circumstance, keeping the larger issue open, this petition is allowed.

10. Resultantly, the impugned order passed by the respondent No.3 under Section 73 of the CGST Act is permitted to be challenged by the petitioner before the Respondent No.6 to where the petitioner shall approach within two weeks of the receipt of a copy of this order, which shall without being guided by any of the findings or observations decide the appeal expeditiously on its own merit, after providing due opportunity to the petitioner

in accordance with law. As the amount is already credited from the Bank account of the petitioner, he would be entitled to seek recredit, barring the amount of pre-deposit which shall be decided by the authority concerned including of the grant of further stay. Till the same is decided, there shall be no further coercive recovery and petitioner shall be entitled to operate the Bank account.

11. Over and above the regular mode of service, direct service of order through e-mode on official email address is also permitted.

(SONIA GOKANI, J)

(MAUNA M. BHATT,J)

M.M.MIRZA