

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5938 of 2022

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M/S MBR FLEXIBLES LTD.

Versus

DEPUTY COMMISSIONER OF STATE TAX (ENFORCEMENT) DIVISION 1

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Appearance:

MR PARITOSH GUPTA, LD.ADVOCATE FOR GUPTA LAW
ASSOCIATES(9818) for the Petitioner(s) No. 1,2
MR TRUPESH KATHIRIYA, LD.ASSTT. GOVERNMENT PLEADER for the
Respondent(s) No. 1,2

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CORAM: **HONOURABLE MR. JUSTICE A.J.DESAI**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 08/06/2022

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE A.J.DESAI)

1. Rule. Mr.Trupesh Kathiriya, learned AGP waives service of Rule on behalf of the respondents.
2. With the consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.
3. By way of the present petition under Articles 226 & 227 of the Constitution of India, the petitioners have prayed as under:

“8(A) Your Lordships may be pleased to issue a writ of certiorari or a writ in nature of certiorari or any other appropriate writ, order or direction quashing and setting aside the impugned order dated 06.01.2022 passed by the respondent no.2;

- (B) *Pending notice, admission and final hearing of this petition, Your Lordships may be pleased to stay operation of the impugned order;*
- (C) *Any other further relief that may be deemed fit may also be granted.”*

4. The case, put forward by the petitioners, is as under:

The petitioner is a private limited company engaged in the business of Flexible Packaging materials. That the petitioner received Notice under section 129(3) of the Central Goods and Services Tax Act, 2017 and the State/Union Territory Goods and Services Tax Act, 2017/ under section 20 of the Integrated Goods and Services Tax Act, 2017 dated 06/01/2022, calling upon the petitioner why penalty could not be levied as referred in the said Notice and asked him to appear before the authority on 13/01/2022. The petitioner received an order dated 06/01/2022 i.e. on the date when the Notice was issued, by which, the petitioner was called upon to remain present before the authority on 13/01/2022. Without giving an opportunity of hearing, the authority passed the order on the same day when the Notice was issued.

By an order dated 30/03/2022, Notice came to be issued by coordinate bench of this Court to the respondents, however, no affidavit-in-reply has been filed till today.

5. Mr. Paritosh Gupta, learned advocate appearing for the petitioners has taken us through the Notice dated 06/01/2022 by which, the petitioner was called upon to appear before the authority on 13/01/2022 and an order dated 06/01/2022 was passed by the authority. He would further submit that the respondent authority has passed the order without giving an opportunity of hearing to the petitioner. It is amply clear from the Notice as well as impugned order that the authority

has passed the order on the date of issuance of the Notice itself. It is clear that the petitioner was not heard before passing the order and therefore, he would submit that it is a case of breach of principles of natural justice, having not offered an opportunity of hearing before the authority and therefore, the petition may be accepted and the impugned order may be quashed and set aside.

6. On the other hand, learned AGP has opposed this petition.

7. We have heard learned advocates appearing for the respective parties and perused the Notice as well as order impugned in the petition. It is clear from the record that Notice as well as order impugned was passed on the same date i.e. 06/01/2022. An opportunity of hearing has not been afforded to the petitioners and therefore, it is in breach of principles of natural justice.

8. Considering the facts and circumstances of the case, we are of the opinion that the petition requires consideration and hence, the same is allowed. The impugned order dated 06/01/2022 passed by respondent No.2 is hereby quashed and set aside. The petitioner shall appear before the authority within a period of three weeks from the date of receipt of this order. Thereafter, the authority shall pass order afresh in accordance with law and after examining the material, which may be placed by the petitioner. Rule is made absolute accordingly.

(A.J.DESAI, J)

(BHARGAV D. KARIA, J)

DIPTI PATEL