



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 267 of 2022

M/s Mahendra Sponge and Power Limited Through Kamlesh Ghosh,
S/o Late Shri S.K. Ghosh, aged about 51 Years, Authorized Signatory,
R/o Sai Nagar, Opp Agriculture College, Raipur, 492012 (Chhattisgarh)

---- Appellant

Versus

Assistant Commissioner State Tax (SGST) Circle-9, Raipur, Civil Lines,
Raipur (Chhattisgarh)

---- Respondent

(Cause-title taken from Case Information System)

For Appellant : Mr. Bhishma Ahluwalia, Advocate

For Respondent : Ms. Astha Shukla, Government Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri Arvind Singh Chandel, Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

09.01.2023

Heard Mr. Bhishma Ahluwalia, learned counsel for the appellant.

Also heard Ms. Astha Shukla, learned Government Advocate, appearing
for the respondent.

2. This appeal is preferred against an order dated 04.05.2022 passed by the learned Single Judge in WPT No. 67 of 2022, declining to entertain the writ petition on the ground that petitioner may avail alternative remedy as available under Section 107 of the Chhattisgarh Goods and Services Tax Act, 2017 (for short, 'the Act of 2017'), as there is no exceptional circumstance to invoke the discretionary jurisdiction under Article 226 of the Constitution of India.



3. The learned Single Judge at paragraphs 5 and 6 had observed as follows :

“5. Undisputedly, upon scrutiny, notice under Section 61, notice in FORM GST ASMT-10 was issued to the petitioner on 11.08.2021 followed by show-cause notice under Section 73 of CGST/ SGST Act and the respondent authority by impugned order had determined the tax liabilities, interest and penalty upon the petitioner under Section 73(9) of CGST/ SGST Act and made demand of the amount mentioned therein. Section 107 of the GST Act, 2017 provides for appeal to appellate authority against the order of adjudicating authority. The order impugned is passed by adjudicating authority, hence, the order is to be assailed before the appellate authority under Section 107 of GST Act, 2017. Petitioner is having statutory alternate remedy of challenging the impugned order. The petitioner instead of availing the statutory remedy available to it of filing appeal under Section 107 of GST Act, 2017 has filed this writ petition. The grounds raised in this writ petition, very well be considered by the appellate authority and as held by Hon'ble Supreme Court in the aforementioned rulings ie. M/s Commercial Steel Limited (supra) the existence of an alternate remedy is not an absolute bar but the discretionary jurisdiction under Article 226 of the





Constitution can be exercised only in exceptional circumstances like :

- (i) a breach of fundamental rights;
- (ii) a violation of principles of natural justice;
- (iii) an excess of jurisdiction; or
- (iv) a challenge to the vires of the statute or delegated legislation.

6. In the case at hand, respondent issued notice under Section 61 of GST Act, calling explanation upon the discrepancies found by the authority to which the petitioner did not reply, thereafter, show-cause notice under Section 73 of CGST/SGST along with the summary of show-cause notice dated 11.10.2021 was also issued.”

4. Mr. Ahluwalia has submitted that the learned Single Judge did not consider the provision contained in Section 75(4) of the Act of 2017, which provides that an opportunity of hearing shall be granted when a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. Drawing attention of the Court to letter dated 20.08.2021 at page 44 and letter dated 30.10.2021 at page 45, he submits that the petitioner had specifically prayed for grant of personal hearing and yet, no personal hearing was provided to the appellant. He also submits that the learned Single Judge committed an error of facts in construing



the notice dated 11.10.2021 to be a show-cause notice as the same was not a show-cause notice.

5. Ms. Shukla, as usual, has fairly submitted that no personal hearing was granted to the appellant and the same was in view of the fact that by letter dated 20.10.2021, though the appellant had prayed for 30 days' time to file reply to the notice dated 11.10.2021, subsequently, he did not file any reply, but, on 30.10.2021, took a plea that he had not been served a detailed show-cause notice and that DRC-01 dated 11.10.2021 is merely a summary of demand as per Rule 142(1) the GST Rules, 2017.

6. We have heard the learned counsel for the parties and have perused the materials on record.

7. Alternative remedy is not an absolute bar if there is violation of principles of natural justice. Irrespective of the fact as to whether the appellant had filed reply or not, it is evident that the appellant had prayed for a personal hearing, which was, admittedly, not granted to the appellant.

8. In that view of the matter, we are of the opinion that it will not be equitable to relegate the appellant to avail alternative remedy.

9. Taking that view, the order of the learned Single Judge dated 04.05.2022 as well as the order dated 02.02.2022 passed by the respondent are set aside and quashed.



10. At this juncture, Ms. Shukla submits that within a period of 10 days, a notice will be issued to the appellant, fixing a date for grant of personal hearing.

11. It is observed that at the time of grant of personal hearing, the appellant would be at liberty to press the contention that notice dated 11.10.2021 is not a show-cause notice.

12. The respondent shall pass appropriate orders after granting opportunity of hearing to the appellant within a period of 45 days from the date of hearing.

13. Till the order is passed after such hearing, the balance amount shall not be recovered from the appellant.

Sd/-
(Arup Kumar Goswami)
Chief Justice

Sd/-
(Arvind Singh Chandel)
Judge