

Court No. - 3

Case :- WRIT TAX No. - 1321 of 2023

Petitioner :- M/S Vidyawati Construction Company

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Pranab Kumar Ganguli

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan

Hon'ble Siddhartha Varma,J.

Hon'ble Shekhar B. Saraf,J.

1. For the levying of service tax the petitioner was served with a notice on 22/23 April, 2021. Thereafter with regard to the service tax for the financial years 2015-16, 2016-17 and 2017-18 the petitioner submitted his reply on 11.07.2023. Thereafter, the petitioner was served various notices to appear in person to place his case. Initially, the notice dated 09.02.2022 was received in the evening of 15.02.2022 and this notice informed that the case was to be taken up on 18.02.2022. It has been stated that the petitioner who is a senior citizen was undergoing treatment in Delhi and therefore, he could not appear on the 18th of February, 2022. Thereafter, another notice fixing 08.09.2022 was received by the petitioner which was the very date the case was to be taken up. Similarly, with regard to the notice dated 30.05.2023, notice was received very late i.e. on 30.05.2023 itself. Subsequently, it has been informed that the petitioner when was to appear on the 10.07.2023, the notice reached the petitioner on 11.07.2023. Learned counsel for the petitioner, therefore, has submitted that even though he had submitted his reply, he was deprived of his opportunity for the personal hearing. Learned counsel for the petitioner states that it was imperative for the petitioner to get a personal hearing to place the petitioner's case and in absence of a

personal hearing definitely the order impugned become erroneous. Learned counsel for the petitioner relied upon **Bharat Mint & Allied Chemicals Vs. Commissioner Commercial Tax & 2 Ors. (2022) 48 VLJ 325** and submitted that the assessing authority was bound to afford an opportunity of personal hearing to the petitioner.

2. Sri Parv Agrawal, learned counsel appearing for the respondents no. 2 & 3 and Sri N.C. Gupta, learned counsel for the respondent no. 1, however, have submitted that when the petitioner had submitted his reply then there was essentially no requirement for a personal hearing. Everything that the petitioner had to state was there in the reply to the notice itself and, therefore, this Court may not interfere. Further more learned counsel for the Department as also the Union of India has stated that the case was fixed for 18.02.2022, 07.06.2022, 08.09.2022, 10.07.2023 and 21.08.2023 and all these dates were preceded by specific notices and, therefore, it cannot be said that the petitioner was deprived of the personal hearing which he now prays for.

3. Having heard the learned counsel for the parties, we are definitely of the view that hearing as is envisaged in Section 73 of the Finance Act, 1994, definitely includes a personal hearing. The petitioner when was deprived of the personal hearing there was a definite prejudice caused to him. Principles of Natural Justice might seem cumbersome when all these procedures are to be adopted, but to run a society in a civilized manner it definitely means that Principles of Natural Justice have to be adhered to in all possible manner. Under such circumstances, we are of the view that the Principles of Natural Justice were violated. Definitely the order impugned cannot be sustained in the eyes of law. The order

dated 22.09.2023 is thus quashed and set aside. The petitioner may now be given a personal hearing on 14.12.2023, on which date he would appear before the Department i.e. respondent no. 2 at 11:00 am.

4. With these observations, the writ petition is accordingly, **allowed.**

5. It is made clear that no unnecessary adjournment would be granted to the petitioner. If however any adjournment is absolutely essential then that would be granted on the imposition of heavy cost.

Order Date :- 22.11.2023

M.S. Ansari

(Shekhar B. Saraf, J.) (Siddhartha Varma, J.)