GAHC010234372015

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3278/2015

M/S LOHIT MARKETING PVT. LTD.
A COMPANY INCORPORTED UNDER THE PROVISIONS OF COMPANIES ACT, 1956 AND HAVING ITS OFFICE AT 1ST FLOOR, ULUBRI, G.S. ROAD, GUWAHATI, ASSAM, REP. BY SRI SOUGATA BHOWAL, S/O SRI LAKHAN CHANDRA BHOWAL, R/O ULUBARI, GUWAHATI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF FINANCE AND TAXATION, DISPUR, ASSAM, GUWAHATI-6

2:THE COMMISSIONER OF TAXES
ASSAM KAR BHAVAN
DISPUR
GHY-6

3:THE SUPERINTENDENT OF TAXES
CENTRAL VAT AUDIT
GUWAHATI KAR BHAWAN
GUWAHATI
ASSA

Advocate for the Petitioner : MSM L GOPE

Advocate for the Respondent : SC, FINANCE and TAXATIONR1-3

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Ms. M. L. Gope, Adv.

For the Respondents : Mr. B. Gogoi, Standing Counsel,.

Date of Hearing : 22.05.2024

Date of Judgment : 22.05.2024

JUDGMENT & ORDER (ORAL)

1. Heard Ms. M. L. Gope, learned counsel for the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, Government of Assam representing the respondent Nos. 1, 2 and 3.

2. The present writ petition is filed under Article 226 of the Constitution of India assailing an order of assessment dated 12.01.2015 passed by the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam for the assessment year 2009-10 under Section 37 of the Assam Value Added Tax Act 2003 read with Rule 22 of the Assam Value Added Tax Rules, 2005 read with Section 9(2) of the Central Sales Tax Act, 1956.

3. Though the aforesaid assessment order has been challenged in the present writ petition on various grounds touching merit of the determination made, however, Ms. M. L. Gope, the learned counsel for the petitioner has confined her argument only to the point that such assessment order has been passed without giving any reasonable opportunity of hearing.

4. Referring to the Notice dated 18.12.2014, issued under Section 37 of the Assam Value Added Tax Act, 2003, the learned counsel for the petitioner submits

that by the aforesaid notice, the petitioner was asked to explain and to show cause, by appearing personally or through authorized agent, on or before 29.12.2014, as to why the assessment for the period 2009-10, 2010-11, 2011-12 and 2012-13 shall not be completed on the basis of facts and sales as detailed in the aforesaid notice. The petitioner on the aforesaid date, only sought for an adjournment and prayed to extend time to submit the reply, however, such prayer has been rejected by an order dated 06.01.2015, without any justifiable ground and therefore, according to Ms. M. L. Gope, learned counsel for the petitioner, the opportunity granted cannot be treated as reasonable opportunity of hearing.

5. Accordingly, Ms. M. L. Gope, learned counsel for the petitioner submits that the impugned assessment order has been passed violating the principles of nature justice inasmuch as an assesse is entitled for reasonable time to reply such show cause notice, more particularly, when the assessment relates to a very long period. Accordingly, she submits that the impugned order of assessment dated 12.01.2015 is liable to be set aside and quashed being violative of principles of natural justice and a direction may be issued to make assessment afresh by giving a reasonable opportunity to the petitioner.

6. Per contra Mr. B. Gogoi, learned Standing Counsel for the Finance and Taxation Department, Government of Assam representing the respondent Nos. 1, 2 and 3, submits that several opportunities were given and in spite of such opportunities, the petitioner had failed to reply to the show cause notice and therefore, there was no wrong in the proceeding ex-parte against the petitioner. Accordingly, no fault can be attributed to the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam in proceeding with the matter ex-parte and passing the impugned order of assessment.

7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.

8. It is undisputed that the notice dated 18.12.2014, was issued under Section 37 of the Assam Value Added Tax Rules 2003. It is also not in dispute, as per show cause that the date of appearance before the authority and filing show cause was fixed on 29.12.2014. It is further not in dispute that the petitioner appeared before the Assessing Authority and sought for time on that day by filing an application. The record also reveals that though extension of time was sought for on 29.12.2014., such prayer was rejected by an order dated 06.01.2015 on the ground that the petitioner had already availed time and therefore, no extension of time can be granted. However, there is nothing on record to show that petitioner was granted time prior to 06.01.2015.

9. It is by now well settled that the principles of natural justice have an universal application and constitute an important facet of procedural propriety envisaged under Article 14 of the Constitution of India. It is equally well settled that administrative and adjudicatory proceeding, which entails significant civil consequence must be held in consonance with the principles of natural justice to meet the requirement of Article 14 of the Constitution of India. In the case in hand, the petitioner was granted time to file show cause. Therefore, per-se, it cannot be said that there were violation of the principles of natural justice. However, it is also equally well settled that the opportunity should be a reasonable opportunity. As recorded hereinabove, it is clear that an application was filed by the petitioner seeking extension of time to reply. Such prayer has been rejected on the ground that the petitioner had already availed time. In the considered opinion of this Court, such decision cannot be treated to be a reasonable decision in not extending the time to file the reply inasmuch as there is no material to show that extension was granted. The prayer of the petitioner seeking an extension of time on the first date of appearance cannot be treated to be an unreasonable delay and grant of such time, on the first occasion can be treated as a reasonable opportunity. Therefore, it cannot be concluded that

reasonable opportunity to the petitioner was granted inasmuch as the ground of rejection in the given facts of the present case is not sustainable.

10. A reasonable opportunity means a fair chance to present the case/respond to the show cause. In a situation when the petitioner had appeared before the authority and sought for extension of time on the first instance, rejection of the same on the ground that the petitioner had already availed time cannot be treated as a reasonable opportunity inasmuch as record does not disclose that the petitioner had taken or was granted time of extension prior to the rejection.

11. In view of the determination made hereinabove, the impugned order of assessment dated 12.01.2015 passed by the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam made under Section 37 of the Assam Value Added Tax Act 2003 read with Rule 22 of the Assam Value Added Tax Rules, 2005 read with Section 9(2) of the Central Sales Tax Act, 1956 is set aside and quashed being violative of the principles of nature justice.

12. The petitioner is now relegated to the Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam subject to the condition that the petitioner shall file objection/reply to the show cause notice dated 18.12.2014 on or before 04.07.2024

13. In the event, such show cause reply is filed, this Court expects that the authorities shall dispose of the matter as expeditiously as possible inasmuch as this is an old pending assessment.

14. While parting with the record, it is also made clear that this Court has not commented anything on the merit of the claim of the assessee or the Tax Department. The Superintendent of Taxes, Central VAT Audit Team, Guwahati, Assam shall decide the matter on its own merit without being influenced by any of the observations made in this case, in the event, the show cause reply is filed

within the stipulated time. It is further made clear that in the event, such reply is not filed by the petitioner within the stipulated time, the impugned order of assessment dated 12.01.2015 shall automatically revive.

15. This disposes the writ petition.

JUDGE

Comparing Assistant