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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 333 OF 2014

Meridian Enterprises Pvt. Ltd. & Anr.	..Petitioners
Vs.	
Union of India & Anr.	..Respondents.

Mr. Navroz Seervai, Senior Counsel with Mr. Sharan Jagtiani i/b M/s
Crowford Bayley & Co., for Petitioners.
Mr. R.V. Govilkar, a/w Mr. Jaydeep Deo for Respondents.

**CORAM: B.R. GAVAI &
A.S. GADKARI, JJ.**

DATE : 25th March 2015.

P.C.:

Rule. Rule made returnable forthwith by consent of the parties.

2 The Petitioners have approached this Court being aggrieved by an order dated 30th May 2013 passed by the Respondent No.2 thereby directing the Petitioners to deposit an amount of Rs.8,58,01,837/- on account of overcharging along with interest thereon.

3 Mr. Seervai, the learned Senior Counsel appearing for the

Petitioners addressed us on the merits of the matter. It is his contention that the product of the Petitioners regarding which an allegation regarding overcharging is made, was never subject matter of the notification dated 19th May 2006. He submitted that the said notification refers to some other products, whereas the product which is manufactured by the Petitioner came to be covered for the first time vide notification dated 27th November 2008. It is the contention of the Petitioners that thereafter the Petitioners have complied with the said notification. The learned Senior Counsel therefore submits that even on merits, the present Petition deserves to be allowed.

4 However, in view of the undisputed fact, we do not find it necessary to go into the merits of the matter. The dates in the present case are undisputed. The Petitioners were issued a show cause notice on 27th May 2009. The Petitioners have filed an elaborate reply dated 30th June 2009. Personal hearing was given to the Petitioners on 9th February 2010 by one Shri Om Prakash, Member Secretary of the Respondent No.2. The Petitioners have also filed a summary of the written statement on 22nd February 2010. However, the impugned order came to be passed on 30th May 2013.

5 It would be thus seen that there is a gap of almost three-years and three-months between the hearing given to the Petitioners and passing of the order. It is further to be noted here that the impugned order is passed by one Mr. Saha, the Director of the Respondent No.2-NPPA.

6 Shri Govilkar, the learned Counsel appearing for the Respondents submits that an explanation has been given as to why there is delay in passing the order. He submitted that the Respondent No.2-NPPA was required to decide more than thousands of matters and that would be on the basis of technical evaluation which involve complication and therefore there is delay which should not be a ground for interfering with the order.

7 The learned Counsel submits that there are cases wherein it is held that even if the hearing is given by one officer and order is passed by another officer on the basis of record available and when no personal hearing is required, the same would not vitiate the impugned order.

8 We find that the contention raised by Shri Govilkar is without substance. The Apex Court in the case of R.C. Sharma Vs. Union of India

& Ors reported in 1976 (3) SCC 574 and in the case of Anil Rai Vs. State of Bihar reported in (2001) 7 SCC 318, has held that even in the cases decided by the High Courts, there should not be inordinate delay between the conclusion of the hearing and the order passed by the Court. The Apex Court has held that undue delay in conclusion of the hearing and passing the order shakes the confidence of the public at large. It is held that the justice should not only be done but it should also appear to have been done. We find that a delay of three-years and three-months cannot be said to undue delay in deciding the matter.

9 Insofar as the second contention of Shri Govilkar is concerned, he submitted that in cases no personal hearing is required to be given, it is permissible that hearing is given by someone else and order passed by someone else. In the present case, the Respondent-Authority has himself understood that the personal hearing was required to be given and as such the personal hearing was given to the Petitioners. It is not in dispute that the personal hearing was given by one Mr. Om Prakash, Member Secretary of the Respondent No.2 and order passed by Mr. Saha, the Director of the Respondent No.2. It is not a matter wherein the order is passed only on the basis of the official record. It is a case wherein the order

is passed on the basis of official record as well as the personal hearing given to the Petitioners.

10 In that view of the matter, we find that the order ought to have been passed by the person who had given personal hearing. As such the second contention is also not sustainable.

11 In that view of the matter, Rule is made absolute by quashing and setting aside the impugned order. The matter is remitted back to the concerned Authority for deciding afresh in accordance with law. We, however, make it clear that we are not adverted to merits of the matter and the Respondent-Authority would decide the matter on its merits. All rival contentions as available to the parties are kept open.

(A.S. GADKARI, J.)

(B.R. GAVAI, J.)