IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 8774 OF 2014 (O & M)
Date of Decision:- 29.07.2015

M/s. 21st Century Builders and Engineers ....Petitioner(s)

vs.

Union of India and others .....Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present:- Mr. Jagmohan Bansal, Advocate, for the petitioner.

Mr. Sukhdev Sharma, Advocate, for the respondents.

S.J. VAZIFDAR, A.C.J. (Oral)

1. The petitioner has challenged the adjudicating order passed by the Commissioner confirming the demand of service tax amounting to ₹4.77 crores together with interest and penalty. The total claim comes to almost ₹10 crores. The respondents served the notice dated 07.10.2014 upon the petitioners calling upon them to show cause as to why sales tax to the amount of about ₹4.77 crores should not be recovered under Section 73 of the Finance Act, 1994 and as to why penalty and interest ought not to be levied. The petitioners, by a letter dated 29.10.2014, informed the respondents that they had shifted their premises to the address communicated therein and requested the respondents to send all correspondence at the new address. As certain documents were served upon the old address, the petitioners by a letter dated 19.11.2014 once again requested the respondents to serve correspondence at the new address and

requested for 20 days' time to submit the information sought. By a further letter dated 21.11.2014, the petitioners informed the respondents that they were collecting the relevant information and documents and sought additional 3 months' time to file a reply to the show cause notice.

2. Notices were issued for personal hearing from time to time, however, at the old address and not at the new address. As a result thereof, the petitioners failed to appear for personal hearing.

3. The only question is whether we ought to exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India to interfere by affording the petitioners the opportunity of being heard.

4. In our view, they ought to be granted the opportunity. It is true that the registration certificate requires the petitioners to mention the address and it is at that address that the respondents would be entitled to address communication.

5. However, in the present case, the petitioners repeatedly requested the correspondence to be delivered to the new address. The respondents never replied stating they they would refuse to comply with this request unless and until their address in registration certificate is changed. The petitioners are, therefore, justified in requesting the respondents to forward the correspondence to the new address. It is also important to note that vide letter dated 21.11.2014, the petitioners had requested 3 months' time to file the reply to the show cause notice. This request was never rejected. Instead, the impugned order was passed even before the expiry of 3 months.

6. In our opinion, this is a fit case to invoke our extra ordinary jurisdiction by affording the petitioners an opportunity to meet the case on

merits.

7. In the circumstances, the petition is allowed. The impugned adjudication order is quashed and set aside. The show cause notice shall be decided afresh. The reply to the show cause notice, if any, shall be filed by 10.08.2015. The petitioners shall attend the office of the adjudicating authority at 11.00 a.m. on 11.08.2015 in the first instance and thereafter, as directed by the adjudicating authority. No further notice of the first hearing shall be necessary.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.07.2015
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(G.S. SANDHAWALIA)
JUDGE