IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 152 OF 2017

M/s. Novacare Drug Socialites Private Limited, a Private Limited Company, having factory at L-134, Phase III-B, Verna Industrial Estate, Verna, Goa through its Authorized representative Shri Anil Shinde. ….. **Petitioner.**

V/s

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001.

2. Commissioner of Customs and Central Excise, Goa ICE House, EDC Complex, Patto, Panaji, Goa.

3. Assistant Commissioner of Central Excise & Service Tax, Division-IV, 4th Floor, Pioneer Blessings Commercial Complex, Opp. District & Sessions Court, Margao, Goa 403 601. …... **Respondents.**

Mr. Bharat Raichandani and Mr. Vibhav R. Amonkar, Advocate for the petitioner.

Ms. Priyanka Kamat, Advocate for the respondents No.2 and 3.

CORAM :- F.M. REIS &
NUTAN D. SARDESSAI, JJ.

Date : - 02/05/2017.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Mr. Bharat Raichandani, learned Counsel appearing for the petitioner and Ms. Priyanka Kamat, learned Counsel appearing for the respondents No.2 and 3

2. Rule. Learned Counsel appearing for the respondents waives service. Heard forthwith, with the consent of the learned Counsel.

3. The main contention of the learned Counsel appearing for the petitioner is that the impugned Order dated 28/03/2017 passed by the respondent No.3 is without following the principles of natural justice. The learned Counsel points out that the petitioners received a notice in the year 2016, alleging that a show cause notice was issued to the petitioner, way back in the year 2010 and, as such, the respondent No.3 wanted to proceed with the decision on such a show cause notice. The learned Counsel further points out that as the petitioner did not have a copy of the show cause notice, time was sought from the respondent No.3 of 15 days, to enable the petitioner to trace the copy of the show cause notice and filed adequate reply to such notice. It is

further pointed out that without granting any further time, and in breach of principles of natural justice, nor giving an opportunity of hearing to the petitioner, the impugned order came to be passed. The learned Counsel further submits that a representative of the petitioner appeared on 17th February, 2016 and informed the respondent No.3 that the records were not traceable and sought for further extension of time. The learned Counsel further submits that as the petitioner was not given an adequate hearing by the respondent No.3, the impugned order is a nullity as it is in breach of the principles of natural justice. The learned Counsel further submits that grave injustice would cause to the petitioner in case this Court does not interfere with the impugned order, which is a nullity in the eyes of law. The learned Counsel has, thereafter, taken us through the objections placed on record to point out that the conduct of the respondent No.3 in proceeding with the show cause allegedly issued in the year 2010 is itself unsustainable in law. As such, he submits that the impugned order be quashed and set aside.

In support of his submissions, the learned Counsel has relied upon Judgments of this Court in the case of ***Milton Plastics Ltd. vs. Union of India and others***., dated 13/12/2016 in Writ Petition No.10788 of 2015 and ***Premier Ltd., vs. Union of India and ors.,*** dated 13/2/2107 in Writ Petition No.12780 of 2016 .

4. On the other hand, Ms. P. Kamat, learned Counsel appearing for the respondents No.2 and 3 has pointed out that the petitioners were served with the show cause notice in the year 2010 and, thereafter, notice for personal appearance was served in January, 2016. It is further pointed out that in January, 2016, a representative of the petitioner appeared and sought time and, accordingly, the matter was posted on 17th February, 2016 when the petitioners' representative again appeared and sought further time to file their reply. The learned Counsel further pointed out that as per their instructions, the representative of the petitioners had informed that written submissions would be forwarded by courier service which were not forwarded and, as such,m the respondent No.3 passed the impugned order. Learned Counsel further submits that the petitioners were immediately served with the impugned Order on 19th April, 2016 and chose to approach this Court in January, 2017. The learned Counsel further submits that the petition is barred by laches and, as such, no interference is called for in the impugned order. It is also pointed out by the learned Counsel for the respondents that the petitioners have an alternate remedy by way of an appeal.

5. We have considered the rival contentions and we have also gone through the records. On perusal of the impugned order, it is seen that it is not in dispute that there is no consideration by the Authority of the stand taken by the petitioner after receipt of the show cause notice. This itself shows that the respondent No.3 has proceeded to pass the impugned order without considering the reply or objections raised by the petitioner to the show cause notice issued in the year 2010. It is also admitted position that the show cause notice was issued in the year 2010 and further, for more than six years no steps were taken by the respondent No.3 to proceed to decide the show cause notice. In this back ground of the facts, granting of some opportunity to the petitioners to file adequate reply to meet the alleged demand by the respondent-Revenue would be justified.

6. Apart from that, the petitioners have pointed out that on the date when the matter was posted on 17th February, 2016, the representative of the petitioners who was present, had sought time to file reply. Without waiting for any reply, the impugned order came to be passed on 28th March, 2017. In such circumstances, we find that as the impugned order passed by the respondent No.3 is in breach of

principles of natural justice, and it is well settled that any order passed in breach of principles of natural justice, which would substantially affect the rights of the parties, is a nullity in law. We find that the contention raised by the learned Counsel appearing for the respondents that the petition itself is barred by laches, cannot be accepted. Apart from that, it is pointed out by the learned Counsel appearing for the petitioners that the petitioners could not trace the show cause notice, nor find out whether any reply was filed thereto and, in fact, prayed for copies of the show cause notice to issued to the petitioners, which were delivered in December, 2016.

7. In the peculiar facts and circumstances of the case and considering that the impugned order is passed in breach of principles of natural justice, without going into the merits of the rival contentions, we find it appropriate to quash and set aside the impugned order dated 28th March, 2017 passed by the respondent No.3 and call upon the respondent No.3 to proceed to decide the show cause notice thereafter, by giving an opportunity to the petitioners to file reply and hearing in accordance with law. We also take support of the view taken by us in the two Judgments in the case of ***Milton Plastics Ltd. vs. Union of India and others***., (supra) and ***Premier Ltd., vs. Union of***

India and ors. (supra). In ***Premier Ltd., vs. Union of India and ors.*** (supra) it has been held at para 9 thus :

> "9. Though Mr. Bangur is aware of these Judgments, he would submit that the facts in this case are somewhat distinct. It is the assessee who is to be blamed for keeping the proceedings pending. The Revenue had made every attempt to adjudicate them, but for want of cooperation from the assessee. We must outline the difference between the power that the authorities possess and which has to be exercised coupled with a duty. Just as there is power to issue any Show Cause Notice, equally there is a duty to adjudicate it promptly. If one is interested in protecting the revenue and to subserve the larger public interest, then, expediency demands that once a Show Cause Notice is issued and duly served, reasonable opportunity has to be afforded to the assessee to reply to the same and/or to submit his/her explanation on merits. If such an opportunity is availed of by the assessee and he/she duly inspects the record, then, the Revenue cannot be said to be acting unreasonably if it directs the assessee to get ready and argue the case. The Revenue would be justified in granting reasonable accommodation, but liberal

> adjournments do not serve any purpose but would rather defeat the public interest. The Revenue must understand that just as it is anxious to recover public money, the assessee is equally keen to face the consequences of legal proceedings. They do not wish to keep the proceedings lingering for they would want to concentrate on their business and not legal proceedings. It is a waste of their time as well. If an adjudication order is passed with reasonable expediency, even the assessees would arrange their affairs and in the event they are aggrieved, they would avail of the further remedies. Therefore, this is a power coupled with a duty and which the Revenue officials must realise. The earlier it is the better it would be for all concerned."

8. As regards the contention of the learned Counsel for the respondents that the petitioners have an alternate remedy, as we have only examining whether the impugned order stands vitiated as the petitioner did not have a fair opportunity to meet the claim of the respondents before the respondent no.3, it will not be appropriate for this Court to decline the exercise of jurisdiction under Articles 226 and 227 of the Constitution on such count.

9. In view of the above, we pass the following :

ORDER

(I) The impugned Order dated 28th March, 2016 passed by the respondent No.3 is quashed and set aside.

(II) The respondent No.3 shall proceed to decide the subject show cause notice afresh, in the light of the observations made herein above, after hearing the petitioners in accordance with law.

(III) All contentions, of both the parties, on merits, are left open.

(IV) The petitioners are directed to appear before the respondent No.3 on 5th June, 2017 at 11.30 a.m.

NUTAN D. SARDESSAI, J. **F.M. REIS, J.**

ssm.