IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1941 OF 2018

Cheteshwar Arvind Pujara } Petitioner
versus
The Union of India and Ors. } Respondents

Mr. Prakash Shah i/b. M/s. PDS Legal for the petitioner.

Mr. Pradeep S. Jetly with Ms. Pooja V. Thorat and Mr. Jaivardhan Singh for the respondents.

CORAM :- S. C. DHARMADHIKARI &
PRAKASH. D. NAIK, JJ.

DATED :- APRIL 10, 2018

P.C. :-

1. The petitioner is an Indian citizen. He is a businessman and says that he plays international cricket representing India. He also plays domestic cricket. He participated in what is known as Indian Premier League (IPL). He was one of the players chosen by the franchisee Knight Riders Sports Private Limited. This franchisee is owner of one team in the IPL, namely, Kolkata Knight Riders. An agreement of 21st April, 2008 with the petitioner was executed by this franchisee.

2. An intelligence was gathered, inquiry made and the service tax section of the Headquarter, namely, Central Excise Commissionerate, Rajkot issued summons, summoning the petitioner for inquiry. That inquiry culminated in an order against the petitioner, but what the petitioner terms is entirely one sided exercise contrary to the principles of natural justice. The petitioner could not attend the hearing on account of his personal difficulties and professional commitments.

3. The matter was carried in appeal and one Chartered Accountant firm was engaged to represent the petitioner. However, from the record, the petitioner says, it is evident that the appeal was dismissed as beyond time.

4. Mr. Jetly appearing for the respondents raised a preliminary objection to the maintainability of the petition by submitting that the orders under challenge can be appealed to the Customs, Excise and Service Tax Appellate Tribunal and its Zonal Bench. There, the issues of the order-in-original being violative of principles of natural justice and the appeal being dismissed erroneously on account of limitation can be urged. Hence, we should not entertain the writ petition.

5. The only contention raised before us is that this petition should be entertained because the order-in-original dated 20th November, 2012 is passed without affording reasonable opportunity of being heard to the petitioner. It is, therefore, ex-facie illegal being contrary to the principles of fairness, justice and equity.

6. With the assistance of both sides, we have perused this order. The order proceeds on the footing that the petitioner has been served with a show cause notice. The order proceeds to hold that the intelligence was gathered, inquiry initiated and thereupon, the show cause notice was issued. The show cause notice raised a demand. It is stated that the petitioner was served with a notice to show cause. Whereas, the petitioner says that part apart from merits, there should be a personal hearing. The personal hearing was fixed on 29th, 30th and 31st October, 2011, but the assessee failed to attend the same. It was adjourned to 16th, 19th and 20th November, 2012 and there was no communication from the assessee requesting for postponement of the personal hearing on both occasions. The officers say that there is due compliance with the principles of natural justice.

7. It is urged before the appellate authority and specifically that there was no notice to the petitioner. When the petitioner

appeared through one Chartered Accountant Archit Agarwal, a specific plea was raised and that is that the order-in-original was communicated by Speed Post and another copy was made available on the petitioner's request by letter dated 6th February, 2015, which was received on 7th February, 2015. This is a discussion on the point of service of the order-in-original. The grievance that the petitioner raises is that he had no opportunity to address the competent authority when the order-in-original was passed and that is purported to be answered in the order-in-original. That it is the assessee's request for personal hearing, which was accepted. The hearing was scheduled in the second week of July, 2012. Earlier it was in October, 2011. The assessee failed to attend the same.

8. What we find from a reading of the order-in-original is that it is dated 20th November, 2012. If the record indicates that the assessee requested for a personal hearing after the second week of July, 2012, then, any dates of hearing scheduled prior to this month and date need not referred. That aspect is wholly irrelevant. The hearing was fixed on 29th, 30th and 31st October, 2011, but the assessee allegedly failing to attend the same has resulted in postponement of the proceedings admittedly. Then, the personal hearing was fixed on 16th, 19th and 20th November,

2012 and what we find is that the order-in-original is dated 20th November, 2012. It means, it was passed immediately on the alleged failure of the assessee to remain present on the three dates in November, 2012. If the assessee was served with the copy of the show cause notice and which is dated 4th November, 2011, then, any hearings prior to the issuance of the show cause notice are of no significance. There, possibly, the assessee may have engaged a Chartered Accountant to give any clarification to the department. However, the issue pertains to a show cause notice issued on 4th November, 2011. The period covered is 1st October, 2008 to 30th September, 2011. Thus, this was a demand of service tax. Once the show cause notice was issued, the assessee filed a reply on 30th May, 2012, then, the assessee pointed out that there were certain professional commitments. There was an injury suffered by the assessee, he was operated upon and was undergoing rehabilitation upto November, 2011. His father also suffered massive heart attack and was unwell. There were professional commitments also. That is why he sought condonation of delay caused in filing of the appeal. That is how the hearing was scheduled in the second week of July, 2012.

9. We do not, therefore, understand the reasoning in para 13 of the order-in-original and reference to any prior hearings of

October, 2011. They are, admittedly, prior to the issuance of the show cause notice. After the show cause notice was issued and the petitioner requested that the matter be taken up post second week of July, 2012, then, we do not see how the order was passed, particularly when the petitioner was notified the dates of hearing on 16th, 19th and 20th November, 2012. It is thus uncalled for and avoidable urgency and expediency in disposal of the proceedings, which prompts us to interfere with the order-in-original.

10. It is in these circumstances, we are unable to agree with Mr. Jetly that this petition should not be entertained. We are mindful of the fact that this is a matter of collection of service tax and when part liability of three lakhs has already been paid by the petitioner. In these circumstances, we are of the view that rights and equities can be balanced by the petitioner being called upon to meet 50% of the demand in the show cause notice. The petitioner should, therefore, deposit a further sum of Rs.5 lakhs within a period of four week from today with the Service Tax Commissionerate. The petitioner must produce proof of such deposit and if that is produced, the order of the adjudicating authority, styled as order-in-original would stand quashed and set aside. Then, the petitioner should appear before the adjudicating authority on given date and time, which will be communicated to

him well in advance. The petitioner cannot make a grievance that he should be allowed to appear in person or he wants to remain present when the hearing is scheduled. Given the petitioner's professional commitments, which are bound to take priorities, we direct that in this case the petitioner must engage a representative, who will be allowed to inspect the records and make submissions. The petitioner cannot insist on personal presence. The fresh order shall be passed uninfluenced by the earlier conclusions as expeditiously as possible and after a period of six weeks from the date of conclusion of the hearing. All contentions are kept open.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**