IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24339 of 2018
and
W.M.P.No.28354 of 2018

M/s. Barathi Data Service Private Limited,
Rep. by its Managing Director: Sri Maduraiveeran
No.11 & 13, Ramachandran Street,
Perambur, Chennai - 600 011. ... Petitioner

Vs

1.Union of India,
Rep. by its Secretary to Govt.
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

2.The Additional Commissioner,
Officer of the Principal Commissioner of CGST &
Central Excise, Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai - 600 034. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the Order in Original No.131/2018-CH.N(ADC) dated 28-8.2018 passed by the 2nd respondent and quash the same as passed without jurisdiction, violative of principles of natural justice, illegal and not sustainable in law.

For Petitioner : Mr.K.Jayachandran

For Respondents: Mr.Rajnish Pathyil,
Central Government Standing Counsel

O R D E R

Mr.Rajnish Pathyil, learned Central Government Standing Counsel takes notice for the respondents and by consent of parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order in original dated 28.08.2018 passed by the second respondent, wherein and whereby, the demand of service tax of Rs.1,15,55,920/- including various cess was confirmed, apart from demanding interest and imposing penalty on the petitioner as stated therein.

3. Heard Mr.K.Jayachandran, learned counsel for the petitioner and Mr.Rajnish Pathyil, learned Central Government Standing Counsel appearing for the respondents.

4. Though several grounds are raised against the impugned order touching upon the merits of the matter, this Court is not inclined to go into the same and express any view on those contentions, since in the considered view of this Court, those are all the matters, which are to be raised and agitated only before the next fact finding authority viz., the Appellate Authority, since the petitioner has challenged the order passed by the Adjudicating Authority. However, this Court is convinced to entertain this writ petition and interfere with the impugned order only on the ground that the same came to be passed in violation of the principles of natural justice as discussed hereunder.

5. The learned counsel for the petitioner contended that though the petitioner has specifically sought for personal hearing through their reply dated 02.08.2018 and such reply was also duly acknowledged by the second respondent and incorporated in the impugned order itself, no such opportunity of personal hearing was given to the petitioner before passing the impugned order. Therefore, he contended that compliance of the principles of natural justice has not been followed by the second respondent in its full spirit and sense by not granting the personal hearing.

6. The learned Central Government Standing Counsel for the respondents though contended that all the objections raised by the petitioner in their reply were considered by the second respondent in detail and consequently, the same were answered, however, fair enough to accept the position that the second respondent has not heard the petitioner in person, even though the petitioner sought for the same through their reply dated 02.08.2018.

7. There is no dispute to the fact that the petitioner while making their reply dated 02.08.2018, has specifically sought for personal hearing. It is also not in dispute that the Adjudicating Authority received such reply and dealt with the same in the impugned order. However, the fact remains that

before passing the impugned order, the Adjudicating Authority has not given an opportunity of personal hearing. At this juncture, it is useful to refer Section 33A of the Central Excise Act, 1944, which is made applicable to the service tax matters under Section 83 of the Finance Act, 1994 wherein it is contemplated that the Adjudicating Authority shall give an opportunity of being heard for the party in proceedings, if the party so desires. Therefore, it is evident that the impugned order, though passed by considering the merits of the matter, cannot be sustained, only on the reason that the same was passed without following the principles of natural justice in its full sense as stated supra.

8. Therefore, this Court is of the view that the matter has to be remitted back to the second respondent for passing fresh orders after giving an opportunity of personal hearing to the petitioner. It is made clear that this Court is not expressing any view on the merits of the matter, as it is for the second respondent to consider the decide.

9. Accordingly, this writ petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the second respondent for passing fresh orders on merits and in accordance with law, after giving due opportunity of personal hearing to the petitioner. The petitioner shall co-operate with the Adjudicating Authority for completion of the proceedings, as directed by this Court, by filing their further reply within a period of two weeks from the date of receipt of a copy of this order. The whole exercise shall be done by the second respondent within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

krk/mk

To

1.Union of India,
Rep. by its Secretary to Govt.
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.

2.The Additional Commissioner,
Officer o the Principal Commissioner of CGST &
Central Excise, Chennai North Commissionerate,
No.26/1, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to Mr.Rajnish Pathiyil, Advocate, S.R.No.64766.

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and
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rrs 03/10/2018