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

WRIT PETITION NO. 1631 OF 2021

Rhenus Logistics India Private Limited ... Petitioner
Versus
Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer and Ors. ... Respondents

...

Mr.P.J.Pardiwalla, Sr.Advocate with Mr.Jeet Kamdar i/by Mr.Atul Jasani for the Petitioner.

Mr.Suresh Kumar for the Respondent.

...

CORAM : K.R.SHRIRAM &
ABHAY AHUJA, JJ

DATED : 25th August, 2021.

P.C.:

Petitioner seeks quashing of an Order dated 9th June, 2021 as well as the demand and penalty notices, both dated 9th June, 2021, on the primary ground that the orders/notices impugned have been issued without following principles of natural justice.

2 Petitioner had received a show cause notice dated 15th April, 2021 for

Assessment Year 2018-2019 along with draft Assessment Order. Petitioner was directed to submit reply on or before 19th April, 2021, i.e., within four days. Petitioner submitted its detailed reply dated 18th April, 2021 in which request for personal hearing was also made. This reply was submitted on 19th April, 2021 as mentioned in the e-proceedings response acknowledgment which is a system generated acknowledgment. Petitioner also received a separate auto generated message on 19th April, 2021 confirming that the request for personal hearing through V.C. has been submitted successfully. Since the request for personal hearing has been included in the reply dated 18th April, 2021 submitted on 19th April, 2021, by acknowledging the receipt of request of personal hearing, the department has also acknowledged the receipt of reply dated 18th April, 2021. On 9th June 2021, Assessment Order came to be passed in which there is reference to the reply submitted by Petitioner to the show cause notice. Strangely in the Affidavit-in-Reply dated 28th July, 2021 to the Petition, it is averred that the reply which was submitted on 19th April, 2021 was never uploaded on ITBA portal and was not even visible on the day the affidavit was affirmed. It is also stated that the request for personal hearing was also made through video conferencing in the said reply and as that reply itself was not available in the ITBA portal, the Officer could not discuss with JCIT nor the Petitioner could be provided an opportunity for VC with JCIT. In the same Affidavit in the subsequent sentence the Officer also states that the Petitioner had raised request for video conferencing on the ITBA portal which was inadvertently overlooked by the Assessing Officer. Of course, they have also raised an excuse of having to work from home under very difficult circumstances due to the COVID Pandemic.

3 We have to observe that what is averred in the Affidavit-in-Reply is contrary to what is there in the Assessment Order and there is total non application of mind in filing the Affidavit-in-Reply. At the same time, in view of what is stated in the Affidavit-in-Reply, we cannot express any satisfaction that Petitioner’s reply to the show cause notice has been given due consideration. Certainly and admittedly, Petitioner has not been granted a personal hearing which was requested.

4 In the circumstances, we set aside the Assessment Order dated 9th June, 2021 and remand the matter back for *de-novo* hearing. Respondents may pass such order that they deem fit after considering the Reply dated 18th April, 2021 uploaded on 19th April, 2021, copy whereof is annexed at Exh.M to the Petition and also by granting a personal hearing and hearing

Petitioner as per Rules.

5 We hasten to add that we have not expressed any views on the merits of Petitioner’s case.

6 Petition disposed.

(ABHAY AHUJA, J.) **(K.R.SHRIRAM, J.)**

REKHA PRAKASH PATIL Digitally signed by REKHA PRAKASH PATIL Date: 2021.08.31 18:18:22 +0530