IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.13652 of 2020
and
WMP. No.16973 of 2020

M/s.B.M.Patel & Co,
Represented by its Proprietor,
Mr.Bipinchandra Manibhai Patel
Aurofood Complex, Pondy-Thindivanam
Highway, T.C.Balam 605 111. …Petitioner

Vs

The State Tax Officer,
Office of the State Tax Officer,
Thindivanam. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records pertaining to the impugned order dated 24.08.2020 of the Respondent in GST No.33AAEPP1329F1Z3/2018-19.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mr.ANR.Jayapratap,
Government Advocate

O R D E R

Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner and Mr.ANR.Jayaprathap, learned Government Advocate for the respondent.

2. The petitioner challenges order dated 24.08.2020 and the main ground argued is violation of principles of natural justice on the ground that the petitioner was not heard in person prior to passing of the impugned order. Reliance is placed on the provisions of Section 75(4) of the Central Goods and Service Tax Act, 2017 (in short 'CGST Act'), which

requires the Officer to grant an opportunity of hearing where a specific request in that regard is received from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

3. The Revenue would defend the impugned order stating that there has been no request received from the petitioner seeking a personal hearing and in response to the show cause notice, a reply was filed settingforth an explanation to the proposals on the notice. In conclusion, the assessee/petitioner has requested that the explanation be considered. In the absence of a specific request for personal hearing, there is, according to the revenue, no necessity for extending opportunity per se.

4. It is true that neither Section 73 nor Section 74 specifically require an assessing officer to extend the opportunity of personal hearing to an assessee prior to completion of proceeding. However, Section 75 of the Act, a general provision relating to the procedure to be followed in determination of tax at sub section (4) thereof, contemplates that an opportunity of personal hearing shall be granted in all cases where a specific request is received, or where the officer contemplates adverse decision against the assessee. Thus, it is only in cases where the explanation offered by the assessee is accepted that there is no necessity for personal hearing. In all other cases, it is incumbent upon the revenue to extend an opportunity of personal hearing to the petitioner. This, in my view, is the proper interpretation of Section 75(4).

5. This writ petition is allowed and the impugned order is set aside. The petitioner will be heard on 29.01.2021 at 10.30 a.m. without expecting any further notice in this regard and consider materials, if any, circulated an order of assessment shall be passed denovo within a period of four (4) weeks from the date of hearing. Connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkp/vs

To

The State Tax Officer,
Office of the State Tax Officer,
Thindivanam.

+1cc to the Special Govt Pleader SR.2426

Writ Petition No.13562 of 2020
and
WMP. No.16973 of 2020

VG II(CO)

CB(03/03/2021)