

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.118

CWP-5605-2021

Date of Decision: 10.03.2021

**M/S SACHDEVA COLLEGES LTD. THROUGH ITS
DIRECTOR SOAM SACHDEVA**

... Petitioner

VERSUS

UNION OF INDIA AND OTHERS

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Ashok Kumar Babbar, Advocate, and
Mr. Surender Kumar, Advocate
for the petitioner.

RITU BAHRI, J.

Learned counsel for the petitioner *inter alia* contends that once an application under Section 97 of the CGST Act is made, then as per Section 98 (2) of the above said Act, it was mandatory for the Authorities to pass an order after giving an opportunity of hearing while rejecting the above said application, at the stage of admission itself. Learned counsel for the petitioner has also placed on record copy of the affidavit of the counsel, who had appeared before the authority (Annexure P-6), where it has been stated that when the application was made, the presence of the concerned counsel was not marked on 28.01.2020. However, the presence has been recorded in the Entry Despatch Register at Serial No.08 on 28.01.2020. Since the presence is acknowledged by the respondents in the Entry Despatch Register, the impugned order (Annexure P-4) could not have been passed without giving an opportunity of hearing.

Notice of motion.

Mr. Hitesh Pandit, Additional Advocate General, Haryana and Mr. Surinder Kumar Daaria, Advocate for Mr. Sharan Sethi, Advocate, accepts notice for respondent No.1 and respondents No.2 and 3, respectively.

A perusal of the impugned order dated 28.08.2020 (Annexure P-4) shows that this order rejecting the application (Annexure P-3), has been passed by observing that the applicant was called upon to appear before the Authority on 09.01.2020 vide Memo No.2 dated 06.01.2020, but none appeared on behalf of the applicant. Therefore, notice of appearance was sent for 28.01.2020 vide Memo No.13 dated 17.01.2020 and still, he did not appear on the said date. Keeping in view the fact that the Authority was bound to pronounce the Ruling within 90 days, as per Section 98(6) of the CGST Act, no further opportunity can be granted for hearing. This order was passed on 28.01.2020 and the same was dispatched on 28.08.2020, as is reflected from first page of Annexure P-4. Similarly, a perusal of the affidavit placed on record as Annexure P-6, by learned counsel for the petitioner, reveals that his presence had been made in the Entry Dispatch Register at Sr. No.08 on 28.01.2020 at 11.10 a.m. Since, the lawyer was present, as is evident from the dispatch register, his absence could not be marked on 28.01.2020. Moreover, the relevant provision of Section 98 Sub-clause 2, second proviso, reads as under:-

“XXXX XXXX XXXX XXXX

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the petitioner.”

As per the above-said proviso, no application can be rejected, unless opportunity of hearing is given to the applicant. Keeping in view the fact that this provision is mandatory and the fact that lawyer's presence has been duly accepted in the entry dispatch register at Sr. No.08, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the matter is remanded back to the authorities for passing a speaking order, after giving an opportunity of hearing to the counsel for the petitioner. Both the parties shall appear before the Haryana Authority for Advance Ruling, as reflected in the order (Annexure P-4), on 31.03.2021 and the authority would decide the matter and pass a speaking order after giving opportunity of hearing to both the parties.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

10.03.2021

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No