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

CWP-14228-2021.
Date of Decision:-30.07.2021.

A.N. Buildwell Pvt. Ltd.

.....Petitioner

Versus

Pr. Commissioner, CGST, Gurugram and another

......Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL**

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Present: Mr. Kunal Sharma, Advocate for the petitioner.

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AJAY TEWARI, J. (Oral)

By this petition, the petitioner-Company (In Liquidation) through its Official Liquidator has challenged the order of assessment on the ground that in the year 2016, the Official Liquidator attached to the High Court of Delhi had been appointed as the Provisional Liquidator of the petitioner-Company and was directed to take possession of the assets of the Petitioner-Company and was also directed to seal the premises of the Petitioner-Company and thus, the show cause notice dated 28.03.2017 and the subsequent notices which were issued by the respondents in and after the year 2017 were to be served upon the Liquidator, which was never done and it is only on that account that the *ex parte* order was passed. The petitioner-company through its official Liquidator then moved a representation to the

Assessing Officer to withdraw the Assessment order and to pass a fresh one after permitting the Official Liquidator to file a reply and after affording him a personal hearing but that has been rejected on the ground that there is no provision in law for withdrawal of the assessment order and it was observed that in case the Official Liquidator was aggrieved by the said Order, he may prefer an appeal.

It has been argued by the Learned Counsel for the Petitioner-Company that since the show cause notice was issued on 28.03.2017, subsequent to the order dated 08.03.2016 vide which the Official Liquidator had been appointed, thus, the Official Liquidator had a right to represent the Company as per Section 457 of the Companies Act, 1956 (hereinafter referred to as the 'Act of 1956') and as per Section 446 of the Act of 1956, any suit or legal proceedings against the company could be continued only with the leave of the Court. It has further been argued that the Official Liquidator in compliance of the Order dated 08.03.2016, had taken over the possession of all the properties of the Company including the registered office of the company and thus, the non-serving of the Show Cause Notice to the Official Liquidator would call for setting aside of the Impugned Assessment Order and the subsequent proceedings pursuant thereto, being in violation of the principles of natural justice. The Learned Counsel has also pointed out to the averments made in the request letter dated 24.05.2021 (P-3) wherein in Para 7 it has been specifically stated that the Show Cause Notice was not received by the Official Liquidator nor any intimation regarding the fixing of personal hearing was received by the Official Liquidator. The said aspect it has been argued, has not been rebutted in the Order dated 28.05.2021 (P-4).

2.) Notice of motion.

3.) Mr. Sunish Bindlish, Senior Standing counsel, CBIC, and Mr. Gagandeep Singh Malhotra, Advocate, accept notice on behalf of the respondents. Learned Counsel for the Respondents have stated that it is a case of best judgment assessment and, thus, the remedy for moving an application for recall is not available and the petitioner, if so advised, should have filed an appeal.

4.) A perusal of the Impugned Assessment Order dated 26.03.2021 (Annexure P-1) would show that the Petitioner-Company has not been impleaded through its Official Liquidator. It is apparent that the Authority was not aware of the Order dated 08.03.2016, vide which, the Official Liquidator attached to the Delhi High Court had been appointed as the Provisional Liquidator of the Petitioner-Company and that the same was prior to the issuance of the show cause notice i.e., 28.03.2017 and, thus, had not issued any notice to the Official Liquidator. It is a matter of settled law that once an Official Liquidator/provisional Liquidator is appointed, then in that situation, it is the Official Liquidator who has a right to defend the Company in all the proceedings and would also have a right to file a reply to the Show Cause Notice taken against the Petitioner-Company.

5.) Even though in a case of best judgment assessment, where a party has not co-operated in spite of being served, possibly the only course open to such person would be to file an appeal against the assessment order and would not be permitted to make any application for recall. However, in the present case, as is apparent from the facts stated herein-above, there seem to be good reasons for the Official Liquidator to have not appeared. In our considered view, no useful purpose would be served in relegating the petitioner to the remedy of appeal as even the Appellate Authority, if it comes to the conclusion that the petitioner-company through its Official Liquidator did not appear for reasons beyond its control, would have to set aside the order and remand the case back for fresh decision after affording an opportunity of hearing to the Petitioner-Company through its Official Liquidator, in accordance with law. Moreover, we cannot be unmindful of the fact that the petitioner-Company is a Company which is in liquidation where creditors are waiting to get their dues.

6.) Thus, in view of the above said facts, we deem it appropriate to set aside the order dated 26.03.2021 (Annexure P-1) with a direction to respondent No.2 i.e., Commissioner of Central Goods and Service Tax to pass fresh order after giving due opportunity to the petitioner-Company through its Official Liquidator to present its case and after affording an opportunity of personal hearing. It would be open for respondent No.2 to go into the issue of validity of service of notices on the Official Liquidator. The Petitioner-Company through the Official Liquidator is directed to appear before respondent No.2 on 09.08.2021 and is also granted time up to 23.08.2021 to file its reply to the show cause notice dated 28.03.2017. It is expected that the respondent No.2 would decide the matter as expeditiously as possible, preferably within a period of three months from 23.08.2021.

7.) The writ petition is disposed off in the above terms.

8.) Since the main case has been decided, the pending application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

July 30, 2021.
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Whether speaking/reasoned:-	Yes / No
Whether Reportable:-	Yes / No.