Item no. 05

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:
The Hon'ble Justice T.S. Sivagnanam
And
The Hon'ble Justice Hiranmay Bhattacharyya

FMA 461 of 2022
with
IA No. CAN 1 of 2022

The Commissioner of CGST, Kolkata Audit-I, Commissionerate
vs.
M/s. Saumya Agrotech Private Limited & Ors.

Appearance:

For the Appellant	:	Mr. K.K Maiti Mr. Tapan Bhanja
For the Respondents	:	Mr. Arijit Chakraborty Mr. Prabir Bera
Heard on	:	02.08.2022
Judgment on	:	02.08.2022

T.S. Sivagnanam J.:

This intra-Court appeal has been filed by the revenue and is directed against the order dated 14.02.2022 passed in WPA 17451 of 2021. The respondent-petitioner filed the writ petition challenging a show cause notice-cum-demand dated 11th October, 2021 issued by the CGST, Kolkata Audit-I. The challenge to the show cause notice was on the ground that there was serious violation of principles of natural justice inasmuch as the pre-show cause notice consultation was issued on 5.10.2021 and received by the respondent-petitioner on the same date at 5.27 P.M. and on the very same date at 5.51 P.M the respondent-petitioner made a representation to the authority to grant time so that they will be able to produce necessary details and documents as the period issued was from 2006 to 2017.

It was the case of the respondent-writ petitioner that without sending any reply to that request that is either accepting or rejecting the same, show cause notice dated 11.10.2021 was issued. Before the learned Single Bench the respondent-writ petitioner referred to various circulars issued by the department and it was contended that pre-consultation was mandatory especially when the demand is over and above Rs.50,00,000/-. The learned Single Bench has quashed the show cause notice, however, preserved the right of the department to issue a fresh show cause notice. Pre-consultation is based upon an audit observation dated 01.10.2021 alleging that there is contravention of provisions of Section 70 of the Finance Act, 1994 (as amended) and Service Tax Rules 1994. The circulars issued by the department are for the purpose of regulating the process of enforcement of the statutory provisions. The reason being that in cases where there are clarifications required to be obtained from the assessees pre-show cause notice consultation will help the assessing officer to understand the case better and may result in even dropping further proceedings in the matter.

Therefore, with this thought process the Board has issued a circular which should be given due credence by the Department.

In the instant case we find that the respondent-writ petitioner did not have sufficient time to react to produce the necessary documents before the concerned authority for a pre-show cause notice consultation. Therefore, to that extent we agree with the view of the learned Single Judge that there has been violation of principles of natural justice. However, we find that quashing of the said show cause notice-cum-demand would not be necessary in the facts and circumstances of the case and if the order passed in the writ petition is slightly modified, it will not only protect the interest of the assessee but also the interest of the revenue.

Therefore, the instant appeal stands **partly allowed** and the order and direction issued by the learned Single Judge quashing the show cause notice cum demand letter dated 11.10. 2021 is set aside and the contents of the show cause notice shall be treated as additional information in addition to audit observation dated 01.10.2021. The appellant/assessing officer is directed to fix a date for personal hearing on which date the case will be discussed with the respondent assessee and the assessing officer shall proceed in accordance with the law. Till such time no coercive action shall be initiated against the respondent-writ petitioner.

The respondent-writ petitioner shall submit their written objection to the audit observation as well as allegations in the show cause notice which we have directed to be treated as additional information in addition to the audit objection within 15 days from the date of receipt of the server copy of this order. Therefore, the assessing officer shall fix a date of personal hearing of the assessee and shall consider the documents that they may produce and thereafter shall proceed on merits and in accordance with law within 10 days from the date on which the personal hearing is concluded.

In the light of the above, it will not be open to the respondent-assessee to raise the issue of limitation as we have partly allowed the appeal filed by the appellant department

Consequently, the connected application stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)