IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11022 OF 2022

Archana Textile Corporation ….Petitioner

V/s.

The State of Maharashtra and Ors. …Respondents

Mr. Rahul Thakar i/b C.B. Thakar for Petitioner.
Ms. S.D. Vyas "B" Panel Counsel for State.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 21st SEPTEMBER 2022

P.C. :

1. Petitioner is impugning an Assessment Order dated 31st December 2021 on various grounds. One of the principal ground raised is that in the impugned order observations and allegations about fake invoices and fake forms have been made against petitioner but show cause notice issued was without any of these allegations and without any details. Therefore, the order has been passed without giving an opportunity to petitioner to effectively deal with the allegations and therefore the order passed is contrary to the principles of natural justice.

2. We are in total agreement with petitioner in as much as the show cause notice dated 5th November 2019 is a bald show cause notice. A copy of the show cause notice tendered across the bar is taken on record and marked "X" for identification.

3. For ease of reference, the Show Cause Notice is scanned and reproduced herein below :-

- ? ✓ 20/9/2022

1839408

DEPARTMENT OF GOODS AND SERVICES TAX

GOVERNMENT OF MAHARASHTRA, INDIA
www.mahagst.gov.in

FORM 302
(See rule 21(1))

Notice under sub-section (5) of section 23 of the Maharashtra Value Added Tax Act, 2002

To : ARCHANA TEXTILE CORPORATION /
KRISH

Reference No. : KOL-VAT-D-007/27150329132V/MVAT/2019-20/1839408

Registration Certificate Number under M.V.A.T. Act, 2002 : 27150329132V

Registration Certificate Number under C.S.T. Act, 1956 : 27150329132C

Whereas, proceeding for the period from 01.04.2016 to 31.03.2017 under section 64 of the Act are in progress in your case, and I am of opinion that

(i) tax is sought to be evaded by not recording or recording in an incorrect manner, following sale(s)

(1) You are requested to produce any evidence on which you rely in support of your contention and at the same time to produce the following documents and accounts at GST BHAWAN, KASABA BAWADA ROAD, KOLHAPUR, 416003 on 11.11.2019 at 01.00 AM.
(2) to show cause as to why you should not be assessed under sub-section (5) of section 23 of the said Act.
1.All Relevant Books Of Accounts
2.Any Other Documents

(ii) following claims or deductions have been incorrectly made by you

Maharashtra Goods and Services Tax Department

Location : KOLHAPUR

Date : 05.11.2019

Signature

KOL-VAT-D-007
ASSISTANT COMMISSIONER OF STATE TAX
Email Id : [illegible]@gmail.com
Contact No : 0231 2689244

It says tax is sought to be evaded by not recording or recording in an incorrect manner, following sale(s) :

(i) ……….

(ii) "following claims or deductions have been incorrectly made by you."

4. The show cause notice does not contain any details of any sale or claims or deductions which petitioner has incorrectly made or claimed or recorded in an incorrect manner. It was duty of respondent to have given all the details to petitioner. Ms. Vyas stated that when petitioner attended personal hearing on 11th November 2019 the details were provided. In our view that procedure adopted is totally incorrect. Every show cause notice issued by respondents in future shall contain every detail required to effectively respond to the show cause notice. This is a direction that respondents shall follow without fail. It is mandatory to give the details.

5. Mr. Thakar states that in the impugned order Respondent No.3 has commented even on those terms/sales details of which were not provided during the personal hearing.

Be that as it may, we fail to understand why Respondent No.3 could not have provided all the details alongwith the show cause notice. This is a serious lapse and we find in many matters the concerned officers do not provide all the details. Perhaps, they do not have proper training on adjudication matters or they are not even aware about the legal provisions or need to follow principles of natural justice.

6. In the circumstances, the impugned order alongwith show cause notice is hereby quashed and set aside. Respondent No.3 may issue a fresh show cause notice to petitioner containing every detail by which Respondent No.3 feels tax is sought to be evaded by not recording or recording in an incorrect manner or petitioner has claimed or deducted incorrectly.

Such a show cause notice shall be issued within two weeks of receiving a copy of this order.

Petitioner shall file detailed reply within two weeks of receiving the show cause notice.

Respondent No.3 may then pass final assessment order within eight weeks of receiving reply after giving personal hearing to petitioner, notice whereof shall be communicated atleast seven working days in advance. The assessment order shall contain all reasons for arriving at the findings there in and if the Assessing Officer does not agree with petitioner's contentions, detailed reasons as to why he disagrees shall also be given in the Assessment Order.

7. Though we were initially inclined to award substantial cost in favour of petitioner to be recovered from Respondent No.3 personally, we

refrain from doing so in this petition. Respondents are warned that this court will not be so generous in future and may even consider directing the observations made to be specified in the career record of the concerned officer. We also hope that the Board and the Principal Commissioner will take these matters seriously and give proper training to its officers.

8. Petition disposed.

(A.S. DOCTOR, J.) **(K.R. SHRIRAM, J.)**