IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7034 OF 2021

CEAT Limited …Petitioner
Versus
The Union of India
And Others … Respondents

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Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani and Rishabh Jain i/b UBR Legal for the Petitioner.

Mr. Swapnil Bangur a/w Ms. Ruju R. Thakkar for the Respondents.

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CORAM : R. D. DHANUKA &
S. M. MODAK, JJ.

DATE : 14 FEBRUARY 2022.

ORAL JUDGMENT (Per : R.D. DHANUKA, J.) :

. **Rule**.

2 Mr. Bangur, learned Counsel appearing for the Respondents waives service. By consent of the parties, this Petition is heard finally.

3 By this Petition filed under Article 226 of the Constitution of India, the Petitioner has impugned *ex parte* Assessment Order dated 11 June 2021 passed by the Respondent No.2.

4 The Respondents had sought clarifications from the Petitioner on certain issues vide letters dated 11 March 2013 and 14 March 2013. The Respondents did not grant any personal hearing to the Petitioner. On 18

March 2013, the Deputy Commissioner of Central Excise passed *ex parte* Order finalizing the assessment for the period from 01.04.2011 to 31.03.2012 and disallowed the entire amount of deductions claimed by the Petitioner.

5 The Petitioner thereafter vide letters dated 10 December 2012 and 21 January 2013, furnished reconciliation statements, cost accountant certificate and various other documents for finalizing the assessment for the disputed period.

6 The Petitioner received E-hearing notice dated 7 June 2021 prefixing the date of hearing on 8 June 2021. The Petitioner vide letter dated 7 June 2021 sought adjournment of the matter as all the relevant files were at Head Office at Worli, Mumbai and office of the Petitioner was not operational because of extension of Covid-19 situation. Respondent No.2 passed *ex parte* Order on 11 June 2021. The Petitioner then filed the present Petition under Article 226 of the Constitution of India.

7 Mr. Raichandani, learned Counsel for the Petitioner invited our attention to the Notices issued by the Respondents and would submit that the first notice was issued after two and half years and remaining notices were issued prior to 48 hours of the hearing. But due to Covid-19 pandemic, the Petitioner could not produce the records and requested for reasonable time to enable the Petitioner to furnish the documents, but the Respondents did not grant any adjournment and passed the assessment Order *ex parte* against the Petitioner, thereby rejecting the claim of the Petitioner.

8 We have perused the documents annexed to the Petition and also the averments in the affidavit-in-reply filed by the Respondents. The notice of

hearing was issued on 28 May 2021 calling upon the Petitioner to remain present on 31 May 2021 at 11.00 a.m. The Petitioner requested for time. On 7 June 2021, the Respondents issued another notice and intimated the Petitioner to remain present on 8 June 2021 and 10 June 2021 at 12.00 noon (wrongly mentioned as 12.00 a.m.). The Petitioner applied for adjournment again on the ground that the notice was short notice).

9 In our view the Respondents ought to have given reasonable time to the Petitioner to remain present at the time of assessment. The notices issued by the Respondents further indicate that the first notice was issued after a long gap but a short notice, whereas the second notice was issued to remain present within 48 hours or less. In our view, action on the part of the Respondents in not issuing notice granting reasonable time to the Petitioner to remain present and passing *ex parte* Order is passed in gross violation of principle of natural justice. We, accordingly, pass the following Order :-

: **O r d e r** :

(a) the Impugned Order dated 11 June 2021 annexed as Exhibit 'A' to the Petition is quashed and set aside. The proceedings are restored to file before the Respondent No.2;

(b) the Petitioner is directed to remain present before the Assessment Authority on 3 March 2022 at 11.00 a.m. without fail. The Petitioner to co-operate with the Respondent No.2 in passing a fresh Order in accordance with law expeditiously and shall not seek any unnecessary adjournment;

(c) it is made clear that the Respondents are not required to issue a fresh notice to the Petitioner to remain present on the next date of hearing;

(d) the Respondent No.2 shall pass a fresh Order in accordance with law by following the principles of natural justice, without being influenced by the observation made and the conclusion drawn in the impugned Order passed by the Respondent No.2 and shall make an endeavor to pass an Order with 8 weeks from the date of the Petitioner appearing before the Respondent No.2;

(e) it is made clear that all contentions of the parties on merits are kept open;

10 The Writ Petition is allowed in aforesaid terms. Rule is made absolute. No Order as to costs.

11 The parties to act on an authenticated copy of the Order.

RAJESH VASANT CHITTEWAN Digitally signed by RAJESH VASANT CHITTEWAN Date: 2022.02.18 11:03:06 +0530

[S. M. MODAK, J.] **[R. D. DHANUKA, J.]**