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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3222 OF 2022

Om Shanti Transport] .. Petitioner
vs.
Union of India & Anr.] .. Respondents

Mr. Dinesh Tambde, for the Petitioner.

Mr.Swapnil Bagwe a/w Mrs. Sangeeta Yadav for Respondents.

**CORAM : S.V. GANGAPURWALA &
M.G.SEWLIKAR, JJ**

DATE : 25TH APRIL, 2022.

P.C.

1] The Petitioner is challenging the Order in Original dated 31.05.2021.

2] The learned counsel for the Petitioner submits that the show cause notice was issued to the Petitioner on 20.10.2020. Notice of hearing was given on 12.03.2021. The Petitioner had attended the hearing on 30.03.2021. Again the letter for virtual hearing was issued on 24.03.2021. The virtual hearing was scheduled on 08.04.2021.

3] The learned counsel for the Petitioner submits that the Petitioner did not possess the facility of virtual hearing and the matter was decided. The transport business of the Petitioner was at stand still. The office was closed. Some of the documents were with the

Chartered Accountant and the Chartered Accountant could not be contacted. Because of all the aforesaid reasons, the matter could not be contested. Hence, it is requested that the Petitioner be given an opportunity to put-forth his say to the show cause notice.

4] The learned counsel for the Respondents submits that ample opportunity was given to the Petitioner. Under letter dated 23.02.2021 annexed to the Petition, the hearing was fixed on 11.03.2021. Thereafter, notice was issued on 12.03.2021 asking the Petitioner to remain present for virtual hearing on 07.04.2021. The third notice was given on 08.04.2021 for hearing scheduled on 22.04.2021 and lastly notice was issued on 23.04.2021 for hearing scheduled on 05.05.2021. It is not the case that the department has hurriedly decided the show cause notice. The Petitioner deliberately remained absent.

5] We have considered the submissions.

6] It is an admitted fact that the Petitioner did not file his say to the show cause notice. The Petitioner at least could have filed say to the show cause notice. During the period from 20.10.2020 upto 05.05.2021 time was granted for hearing. At least till this date say could have been filed. The Petitioner attended the office of Respondents on 12.03.2021 and had placed on record some documents as contended by the Petitioner. At that time also say could have been filed.

7] No doubt, the State was witnessing lock-down. It was a second lock down at the relevant time due to second waive of Covid when the hearing was scheduled.

8] Considering the above-said facts that the proceedings are ex-parte, we are inclined to grant one more opportunity to the Petitioner. However, the Petitioner also deserves to be mulct with costs. In the result, following order is passed :

i] The impugned Order in Original dated 31.05.2021 is quashed and set aside on a condition that the Petitioner deposits costs of Rs.25,000/- within three weeks from today. The payment of cost is condition precedent.

ii] The Petitioner shall also file say to the show cause notice, within three weeks from today.

iii] The Respondents shall decide the show cause notice afresh on its own merits in accordance with law considering the say filed by the Petitioner, preferably within four months thereafter.

iv] Writ Petition is disposed of. No costs.

[M.G.SEWLIKAR, J]

[S.V.GANGAPURWALA,J]