IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2909 OF 2019

Ballaleshwar Pipes and Tubes Pvt. Ltd. ….Petitioner

V/s.

The State of Maharashtra and Ors. ….Respondents

Ms. Sairuchita Chowdhary a/w. Mr. Mayuresh Ingale and Ms. Padmaja Malgaonkar i/b. J. Shekhar and Co. for petitioner.
Mr. Himanshu Takke, AGP for respondent nos.1 and 2.

CORAM : K.R. SHRIRAM &
A.S. DOCTOR, JJ.
DATED : 26th JULY 2022

P.C.:-

1 Petitioner is impugning an order dated 31st March 2018 passed by respondent no.3 for Financial Year 2013-2014. Petitioner is primarily unhappy with respondent no.3 disallowing an Input Tax Credit (ITC) of Rs.21,54,235/- with respect to purchases from one M/s. Vyash Vanijya Private Limited. According to petitioner, this disallowance is arbitrary because it is also reflected in the Mahavikas system.

2 The only sentence we find in the impugned order for disallowing this ITC reads as under :

> *Considering the findings received from Investigation branch the ITC of Rs.21,54,235/- with respect to purchases from M/s. VYASH VANIJYA PRIVATE LIMITED has been disallowed. Hence, assessment order is passed as under -.*

3 What was received from the Investigation Branch or whether it has been provided to petitioner or petitioner was called upon to give

explanation on the information does not find a mention in the impugned order. In our view, principles of natural justice requires that if any information or finding is going to be used against an assessee/registered person or any party, a copy of that has to be provided in advance and petitioner should be given an opportunity to explain. It will be useful for us to also refer to an internal circular dated 10th August 2017 where the Commissioner of Sales Tax, Maharashtra State, has lamented about the problems faced by the department due to the failure on the part of the adjudicating authorities not passing orders in judicious manner. The Commissioner of Sales Tax has also mentioned the fact that the Assessing Officers, despite having been issued guidelines regarding the procedure to be followed as also the care to be taken while passing the orders, are not following the instructions properly. In the internal circular, some of the improprieties mentioned read as under :

> *3. It is also seen that disallowances in assessment orders are done without assigning any reason for it nor is the relevant provision under which the disallowance done is quoted. In such a case, neither the dealer nor the appellate authority are able to understand as to why certain claims are disallowed. This should be avoided.*
>
> *xxxxxxxxxxxx*
>
> *5. The proper hearing is not given to the dealer in many cases. For example, while passing orders levying penalty, neither is the proper notice given nor is the concerned section under which penalty levied quoted. Disallowances are also made without properly hearing the dealer. Also, adequate time is not given to him to produce the evidence.*

Paragraph D of the internal circular also reads as under :

> *D. It is hereby informed that if any officer is found to be passing orders without following the procedure laid down in the circulars referred above as well as the present one, then appropriate disciplinary proceedings would be initiated or action under Section 12 of the MVAT Act 2002 will be taken.*
>
> *All the departmental officers are directed to follow the above instructions scrupulously.*

4 In the circumstances, since there is nothing to indicate that petitioner was given details about the findings received from the Investigation Branch and given an opportunity to explain or put forth petitioner's case, in our view, petitioner has not been given a proper hearing and the order has been passed without proper notice to petitioner. It would also amount to breach of principles of natural justice. Therefore, the impugned order is hereby quashed and set aside and the matter is remanded for *denovo* consideration.

The order shall be passed by an officer other than Mr. A.S. Kudale, who is the Deputy Commissioner of Sales Tax, who had passed the impugned order.

5 A copy of the finding of the Investigation Branch shall be provided to petitioner within one week from today by respondent no.2/3. If there are certain portions that does not pertain to petitioner, those portions could be redacted. Within two weeks of receiving these findings, petitioner may file further reply/submissions.

6 Before passing any order, a personal hearing shall be given to petitioner with atleast seven working days advance notice.

After the personal hearing, petitioner, should they wish to file written submissions recording what transpired during the hearing, those written submissions shall be submitted within three days after the personal hearing.

The order to be passed shall be a well reasoned order discussing every submission made by petitioner and the order shall give a finding on every submission made by petitioner.

The assessment order shall be passed within twelve weeks from today.

7 We clarify that we have not made any observation on the merits of the matter.

8 In view of what is stated in paragraph D of the internal circular quoted above, respondent no.2 shall consider this order with the papers and if deemed fit, may initiate appropriate disciplinary proceedings or action under Section 12 of the MVAT Act, 2002 against the said Mr. A.S. Kudale.

9 Petition disposed.

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