IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6774 OF 2023

Jijabrao A. Patil)
Proprietor of Jai Shrikrishna Enterprises)
Age 60 years, Occu : Business,)
having its office at)
Bombay Agra Highway, Bombay Agra Road)
Nardana, Dhule – 425404) .. Petitioner

Versus

1. Union of India)
Through the Secretary,)
Ministry of Law and Justice,)
Department of Legal Affairs,)
Branch Secretariat, Aaykar Bhavan,)
Annex, 2nd Floor, New Marine Lines,)
Mumbai - 400 020.)

2. Commissioner)
Central GST and Central Excise,)
Nashik, Plot No.155, Sector P 34,)
NH, Jaishtha – Vaishakh,)
CIDCO, Nashik - 422 008.) .. Respondents

Mr.Brijesh Pathak for Petitioner.
Mr.Jitendra Mishra a/w Mr.Sangeeta Yadav for Respondents.

CORAM : G. S. KULKARNI &
JITENDRA JAIN, JJ.
DATE : 17th October 2023

Judgment (per Jitendra Jain, J.):-

. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks following reliefs :-

"(a) that this Hon'ble Court may be pleased to issue a writ, order or direction in the nature of mandamus or any other appropriate writ thereby declaring that the impugned Order-in-Original dated 30.11.2022, Exhibit I, having been passed in complete violation of principles of natural justice and fair play, deserves to be quashed and/or set aside;

(b) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other appropriate writ, order or direction calling for the record and proceedings in Show Cause Notice dated 22.12.2020, Exhibit H and consequent Order-in-Original dated 30.11.2022, Exhibit I, and all other records pertaining thereof and after considering the validity, legality and propriety thereof, be pleased to quash and/or set aside the impugned Order-in-Original dated 30.11.2022, Exhibit I, passed by 2nd Respondent."

2. Brief facts in the present petition are as under :-

(i) In the year 2016, audit was conducted by the respondents with respect to the service tax on works contract services of the petitioner. The correspondence with respect to the said audit was done by the respondents at the following address :-

"M/s.Jai Shri Krishna Enterprises, (Prop. J.A. Patil),
No.02, Shiv Ratna Apartments,
Professor Colony,
Dhule – 424 002."

(ii) On 1st July 2017, the Goods and Services Tax Act (CGST) was introduced which subsumed indirect tax including service tax. On 28th July 2018, the registration certificate was issued by the respondents to the petitioner under the CGST Act in which the address of the principal place of business was "Bombay Agra Highway, Bombay Agra Road, Nardana Dhule, Dhule, Maharashtra - 425404."

(iii) On 3rd April 2023, the petitioner addressed a letter to the respondents stating that the petitioner's chartered accountant who visited the respondents' office became aware that an Order-in-Original (O-I-O) has been passed against the petitioner confirming the service tax of Rs.4,26,78,295/-. It is at this point of time that the petitioner became came to know about such order. Therefore, vide letter dated 3rd April 2023 requested the Commissioner, Nashik to provide him with a copy of the O-I-O and a copy of the show cause notice for taking appropriate legal remedies.

(iv) On 21st April 2023, the respondents, based on the aforesaid request of the petitioner, furnished to the petitioner a copy of the show cause notice dated 22nd December 2020 and O-I-O dated 30th November 2022. Both the show cause notice and O-I-O borne the address of 2, Professor Colony Road, Jai Hind Colony, Dhule which was the old address of the petitioner. The petitioner's registration certificate under GST dated 28th July 2018 had new address being "Bombay Agra Highway, Bombay Agra Road, Nardana Dhule, Dhule, Maharashtra 425404."

3. It is, therefore, submitted by the petitioner that both the show cause notice and the O-I-O were returned unserved since same were sent to old address and same has been admitted by the respondents in the letter dated 21st April 2023. The petitioner contended that the respondents ought to have issued the show cause notice at new address which was appearing on the portal of the respondents and having not done so, the impugned proceedings are in violation of principles of natural justice and ought to be set aside.

4. Per contra, the respondents submitted that the petitioner ought to have informed the respondents about new address and, therefore, the respondents were justified in issuing the show cause notice at the old address. The respondents have not disputed that the show cause notice and the O-I-O sent at the old address has been returned by postal authority as 'undelivered.' The respondents have also not disputed the new address appearing in the registration certificate issued on 28th July 2018.

5. Having heard learned counsel for the petitioner and the respondents, we are of the view that the impugned O-I-O dated 30th

November 2022 has been passed without granting the petitioner an opportunity of hearing since the show cause notice was issued at the old address. Admittedly, the petitioner has informed the new address to the respondents which is evident from the registration certificate issued by the respondents. Therefore, the respondents ought to have issued the show cause notice at the new address and not at the old address. The impugned order, therefore, is passed without giving opportunity of hearing and, therefore ought to be quashed and set aside.

6. In view of the above, we pass the following order :-

(i) The Order-in-Original dated 30th November 2022 is quashed and set aside;

(ii) The respondents to issue a show cause notice dated 22nd December 2020 at the new address being "Bombay Agra Highway, Bombay Agra Road, Nardana Dhule, Dhule, Maharashtra - 425404."

(iii) The respondents to hear the petitioner and after giving personal hearing pass an order within a period of twelve weeks from the date of personal hearing.

(iv) All contentions of the parties are kept open.

(v) Petition is disposed of. No order as to costs.

JITENDRA JAIN, J. ***G. S. KULKARNI, J.***