IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10329 OF 2023

Vidhata Metal, through Ishwar G. Samota … Petitioner

Versus

Union of India, through its Secretary, Department of Revenue & Ors. … Respondents

Mr. Abhishek Rastogi for the petitioner.
Ms. Sangeeta Yadav for the respondents.

CORAM: G. S. KULKARNI & JITENDRA JAIN, JJ.
DATED: 4 September, 2023

P.C.

1. We have heard Mr. Rastogi, learned counsel for the petitioner and Mrs. Yadav, learned counsel for the respondent/revenue.

2. This petition under Article 226 of the Constitution of India is filed praying for following reliefs:

> *"Therefore, in light of the above, the Petitioner most humbly submit that this Hon'ble Court may be pleased to:*
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> a. *issue a writ, order, or direction in the nature of Mandamus, or any other appropriate writ, order, or direction declaring that Respondent No. 4 issued the Impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A) in violation of Article 14 of the Constitution, Rule 142(1A) of CGST Act, without authority of law, and/or Circular No. 171/03/2022-GST dated 06.07.2022 (Exhibit Q);*
>
> b. *issue a writ, order, or direction in the nature of Certiorari, or any other appropriate writ, order or direction calling for the record and proceedings of Respondent No. 4 in the Impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A) and all other records pertaining thereof, to consider the validity, legality and propriety thereof, and whereafter, be pleased*

to quash and/or set aside the said Impugned Show Cause Notice (Exhibit A);

c. *issue a writ, order, or direction in the nature of Declaration, or any other appropriate writ, order, or direction reading down and/or setting aside Proviso to Paragraph 3 of the Impugned Notification No. 2/2017-CT dated 19.06.2017 (Exhibit C), Impugned Circulars dated 05.07.2017 (Exhibit D) and 09.02.2018 (Exhibit E) inasmuch as they are ultra vires the CGST Act and have been issued without authority of law;*

d. *restrain Respondents to proceed with the adjudication proceedings in relation to Impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A), pending fi hearing and disposal of this petition;*

e. *restrain passing of any final orders in relation to impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A);*

f. *direct Respondent No. 4 to adhere to the procedure established by law inasmuch as issuance of Form GST DRC-O1A dated 16.01.2023. bearing F. No. V/CGST/TR/Enquiry/V MPL/07/2018-9/4436(Exhibit G) should have preceded Impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A), which has not been followed in the present case;*

g. *waive mandatory pre-deposit under Section 107(6)(b) of CGST Act and accordingly permit the Petitioner to appeal against any order, if passed, in relation to the Impugned Show Cause Notice dated 02.02.2023 bearing No. 12/TR/2022-23 and DIN 20230267VS00008233E2 (Exhibit A);"*

3. Admittedly, the show cause notice dated 2 February, 2023 is pending adjudication. The petitioner has number of grievances as averred in the petition including that the notice in Form GST DRC-01A dated 12 January, 2023 has been back-dated, which according to the petitioner, was immediately informed to the Additional Commissioner, CGST & EX, Thane Rural by the petitioner's letter dated 8 March, 2023. Thus, it is the petitioner's contention that the same was received after issuance of the show-cause notice. Hence, according to the petitioner, on such ground itself, the show cause notice needs to be dropped.

4. The next contention as urged by Mr. Rastogi is to the effect that the show cause notice would fall foul of the Circular dated 6 July, 2022 issued by the Central Board of Indirect Tax & Customs, GST Policy Wing, which is issued in clarification of various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transaction involving fake invoices. It is his submission that if such a circular is applied, the show cause notice itself would not stand. It is also Mr. Rastogi's contention that when the said issue as urged in the petition are so glaring, the petitioner ought not to suffer adjudication of show cause notice, hence the department is required to take an appropriate call.

5. On the other hand, Mrs. Yadav, learned counsel for the revenue has opposed the petitioner and submitted that the issues can be gone into by the Adjudicating officer in adjudicating the show cause notice.

6. Having heard Mr. Rastogi, learned counsel for the petitioner and Mrs. Yadav, learned counsel for the revenue and having perused the record, we are of the opinion that in the facts of the present case, it would be appropriate that all these issues are gone into by the Designated Officer in adjudicating the show cause notice. We find that the show cause notice itself is dated 2 February, 2023, which is issued almost about 7 months back and the same is pending adjudication. A reply to the show cause notice is yet to be filed, as the petitioner thought it appropriate to file the present petition, which came to be filed on 20 June, 2023.

7. In the aforesaid circumstances, if the petitioner files appropriate reply to the show cause notice raising all contentions as raised in the petition as also on the circular dated 6 July, 2022 within four weeks from today, let the show cause notice be adjudicated by the Adjudicating officer by granting an opportunity of personal hearing to the petitioner within eight weeks from of the reply to show cause notice being filed.

8. All contentions of the parties are expressly kept open.

9. The petition is accordingly disposed of.

10. Needless to observe that in adjudication of show cause notice, the Designated Officer will take into consideration all pleas as raised by the petitioner.

(JITENDRA JAIN, J.) (G. S. KULKARNI , J.)