IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10642 OF 2023

Buli Chemicals India Pvt. Ltd. … Petitioner

Versus

Assessment Unit Income Tax Dept. & Ors. … Respondents

Mr. Madhur Agrawal i/by Mr. Atul K Jasani, for Petitioner.
Mr. Ajeet Manwani with Samiksha Kanani for Respondent-State.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 28th August 2023

P.C. :

1. Petitioner is impugning the assessment order dated 27th May 2023 passed under Section 143(3) read with Section 144B of the Income-tax Act, 1961 ("Act") for the Assessment Year 2020-21 along with consequential demand notice and penalty notice, both dated 27th May 2023.

2. Mr. Agrawal states that Petition was served on 26th June 2023. No reply has been filed till date.

3. In view of the facts and circumstances of the case, we do not feel it necessary to go into the details and the Petition is being disposed at the stage of admission itself.

4. Petitioner received a notice dated 12th May 2023 calling upon Petitioner to show cause as to why variation mentioned therein should not be made to the returns filed by Petitioner. The notice has been digitally signed on 22nd May 2023 at 13:21:58 IST. Petitioner has been given time to respond by 12:41 hour on 23rd May 2023, i.e., less than 24 hours.

5. On 24th March 2023, Petitioner addressed communication to Faceless Assessment Unit requesting for time to prepare details and documents and submit it by 10th June 2023 since Petitioner has been taken over by new management and consequently there was change in Board of Directors also. Despite that assessment order came to be passed on 27th May 2023 making variations mentioned therein. It is also recorded in the impugned assessment order that Petitioner was given time to give final reply to the show-cause notice but Petitioner sought adjournment on 20th June 2023 and adjournment cannot be granted due to paucity of time. There is no explanation as to what was the urgency or why there was paucity of time because time for completing assessment was expiring on 30th September 2023.

6. Mr. Manwani submitted that Petitioner had been given opportunity earlier as recorded in paragraph 2 of the impugned order but Petitioner did not respond. Mr. Agrawal in response stated that Petitioner was undergoing transition as mentioned in the adjournment request noted earlier. Mr. Agrawal states that Petitioner was always and is ready and willing to give within two weeks from today explanation to show-cause as to why variation should not be made.

7. In our view, as the time limit was expiring only on 30th September 2023, the Assessing Officer could have been considerate and granted time up to 10th June 2023. In any case, by giving less than 24 hours notice to respond to an Assessee, in our view, would violate the principles of natural justice. There are various circulars issued and in other provisions that provide at least 7 days and up to 30 days notice has to be given. We feel the Assessing Officer, since there was no urgency, should have given minimum seven days time to respond.

8. Therefore, we hereby quash and set aside the impugned order dated 27th May 2023 and consequential demand notice and penalty notice also dated 27th May 2023 and remand the matter to Faceless Assessment Officer.

Respondents are directed to open the portal to enable Petitioner to respond/file reply to the show-cause notice dated 22nd May 2023 within two weeks of the portal being opened.

Thereafter Assessing Officer may pass such order as he deems fit in accordance with law within eight weeks.

Before passing any order, personal hearing shall be given to Petitioner, notice whereof shall be communicated to Petitioner at least five days in advance.

If Assessing Officer is going to rely on any judgment or order of the Tribunal or a Court, list thereof shall be made available to

Petitioner along with the notice of personal hearing, so that Petitioner may deal with or distinguish the same.

9. We further make it clear that Assessing Officer shall not rely on any material or intimation or document, copy whereof is not made available to Petitioner at least seven working days before the personal hearing.

10. The Petition disposed.

11. We clarify that we have not made any observations on the merits of the matter.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**