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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15210 OF 2023

Kuehne Nagel Private Limited }
a company incorporated under the }
Companies Act, 1956, and having its }
registered office at B-1/1018, Vasant Kunj, }
New Delhi – 110070 and having Branch office }
Located at B-2/601, Boomerang, }
Near Chandivali Studio, Chandivali Road, }
Mumbai 400 072. } ...Petitioner

Versus

1. The State of Maharashtra }
Through the Secretary, }
Department of Goods and Service Tax }
Mantralaya, Mumbai. }
2. Commissioner of State Tax }
GST Bhavan, Mazgaon, }
Mumbai -400 010, Maharashtra. }
3. Deputy Commissioner of State Tax }
(Bhiwandi-501), KAL-VAT-E-002 }
LTU-01, Kalyan, }
Cabin, 3rd Floor, Sai Vihaar Building }
Above Gurudev Hotel, Kalyan West, }
Station Road, Thane– 421 301 }
Maharashtra. }
4. The Union of India }
Ministry of Finance, }

Department of Revenue, }
 North Block, New Delhi. } ...Respondents

Mr. Yash Prakash i/by PDS Legal for the Petitioner.
 Ms.Shruti D.Vays, Addl.G.P. a/w Ms.P.N. Diwan, AGP for State.

**CORAM : G. S. KULKARNI &
 JITENDRA S. JAIN, JJ.**
DATE : DECEMBER 06, 2023

P.C.:

. By this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following substantive reliefs :-

(a) this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof be pleased to quash and set aside the impugned ex-parte Order in Form GST DRC-07 Reference No. DC/E-002/Bhiwandi-501/ LTU-01/ Kalyan/DRC-07_Audit_2017-18/ 2023-24/B-208 dated 18.08.2023 passed by the Respondent No. 3 (Exhibit "A");

2. The petitioner is engaged in the business of freight forwarding, clearance, logistics, warehousing, distribution etc. On 5th January 2021, respondent no.3 issued a notice for conducting audit of the books of account of the petitioner for the period 2017-18. In compliance thereof, the petitioner submitted various documents. On 2nd September 2022, discrepancies noted by the audit team were communicated to the petitioner to which the petitioner filed a detailed reply. On 19th October

2022, Final Audit Report in Form ADT-02 intimating the audit observations were communicated to the petitioner.

3. On 7th June 2023, respondent no.3 issued a show cause notice along with summary order in Form GST DRC-01 seeking to demand from the petitioner tax amounting to Rs.6,19,77,291/- along with interest amounting to Rs.6,50,76,155/- and penalty. On 11th July 2023, the petitioner sought an extension of 30 working days to file a reply to the show cause notice to which there was no reply by the respondents. On 23rd August 2023, the petitioner filed its reply to the said show cause notice. However, respondent no.3 by then on 18th August 2023, passed an ex parte order raising demand of tax amounting to Rs.4,65,26,248/- along with interest of Rs.5,02,48,348/- and penalty of Rs.46,52,625/-. It is on this back drop that the present proceedings are before us.

4. The petitioner contends that in the show cause notice dated 7th June 2023 against caption "Date of personal hearing," respondent no.3 has stated "NA" which is stated to be "not applicable." It is contended that in the reply to the show cause notice dated 11th July 2023, the petitioner had specifically requested for personal hearing before any decision is taken on the matter by respondent no.3. However, without granting any

personal hearing, respondent no.3 proceeded to pass the impugned order. The petitioner would, therefore, submit that the impugned order is passed without an opportunity of a personal hearing being granted to the petitioner, which according to the petitioner, is contrary to Section 75(4) of the Central Goods and Services Tax Act, 2017 (for short “CGST Act”). The petitioner, therefore, submits that the impugned order is violative of the principles of natural justice and is required to be set aside.

5. Per contra, the respondents would submit that in the reply dated 11th July 2023 to the show cause notice, although the petitioner sought for personal hearing, however, while tick marking the box relating to the option for personal hearing, the petitioner has ticked mark the box “No” and, therefore, no personal hearing was granted. The respondents would further contend that the impugned order is an appealable order and, therefore, the petition be not entertained, and the petitioner should be relegated to take recourse to the alternate remedy of an appeal.

6. We have heard learned counsel for the petitioner and the respondents and with their assistance have perused the records.

7. In our view, in the facts and circumstances of the case, the

impugned order is passed contrary to the principles of natural justice as recognised by the provisions of Section 75(4) of the CGST Act and, therefore, it satisfies one of the parameters for exercising discretion of this Court to entertain the petition inspite of there being an alternate remedy of an appeal.

8. Section 75(4) and Section 75(5) of the CGST Act reads thus :-

“Section 75 – General provisions relating to determination of tax -

(1) to (3) ...

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.”

(emphasis supplied)

9. The petitioner in reply to the show cause notice has explicitly stated for personal hearing before any decision is taken by respondent no.3, although inadvertently, it had ticked mark the box “No”. In our view, on holistic reading of the reply, there appears to be an inadvertent error on the part of the petitioner of tick marking the box “No,” because in the very same letter, the petitioner has expressly requested for personal

hearing. The department was thus under an obligation to grant an opportunity of a hearing to the petitioner.

10. In our opinion, this is a clear case where the adjudicating officer was required to take into consideration the specific request as made by the petitioner that an opportunity of personal hearing be granted to the petitioner. When such specific plea was taken, a mechanical approach was adopted by the adjudicating officer in only noticing the box where inadvertently the petitioner had put a tick mark on 'No'. Thus, this was not a case where the petitioner had expressly waived its right of personal hearing.

11. In the absence of the petitioner waiving its right of a personal hearing, the provisions of Section 75(4) of the CGST Act were squarely applicable and accordingly, an obligation was cast on the adjudicating officer to grant an opportunity of hearing to the petitioner. Thus, the petitioner having not been granted hearing, the impugned order would be required to be held to be in breach of the principles of natural justice and ex-facie contrary to the provisions of Section 75(4) of the CGST Act.

12. In the aforesaid circumstances, we allow the petition by the

following order:

- (i) The impugned order dated 18 August, 2023 is quashed and set aside;
- (ii) Respondent no. 3 shall grant an opportunity of personal hearing to the petitioner and after considering all contentions of the petitioner, pass an appropriate order in accordance with law. The aforesaid exercise be undertaken by respondent no. 3 within a period of four weeks from the date of hearing.

13. Disposed of in the above terms. No costs.

[JITENDRA S JAIN, J.]

[G. S. KULKARNI, J.]