



WEB COPY



W.P.No.1863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **01.02.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.1863 of 2023
and
W.M.P.No.1965 of 2023

M/s.Lenovo India Private Limited,
(Represented by its Manager, Indirect Taxation, Shri.Govindaraya Pai)
AWFIS Space Solutions,
South Phase, Guindy Industrial Estate,
Chennai - 600 035.

... Petitioner

Vs.

Assistant Commissioner of GST & Central Excise,
Guindy Division, Chennai South Commissionerate of Central Taxes,
8th Floor, MHU Complex, GST Bhavan,
692, Anna Salai, Nandanam,
Chennai - 600 035.

... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records relating to order dated 13.12.2022 bearing Reference number ZF3312220159393 passed by the respondent rejecting refund claim for Rs.8,52,78,067/- filed by the petitioner being Integrated Goods and Service Tax (IGST, in short) paid on supply of goods to SEZ Units and quash the same holding the order as non-est, unlawful and improper.



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For Petitioner : Mr.J.Shankarraman

For Respondents : Mr.M.Santhana Raman
Senior Panel Counsel

ORDER

The petitioner has challenged the impugned order dated 13.12.2022, rejecting their application seeking refund, on the ground of violation of principles of natural justice.

2. The petitioner claims that a show cause notice was issued to them on 21.11.2022 at 18:17:33 hrs, calling upon the petitioner to submit their reply within 15 days from the date of service of the notice. However, in the notice dated 21.11.2022, the operative portion calls upon the petitioner to appear before the respondent on 28.11.2022 at 03.00 p.m. either through physical / virtual hearing. It also states that if the petitioner fails to furnish a reply within the stipulated date or fails to appear for hearing on the appointed date and time, the case will be decided ex parte on the basis of the available records and on merits.



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3. Admittedly, the show cause notice dated 21.11.2022 issued at 18:17:33 hrs to the petitioner, calls upon the petitioner to submit a reply within a period of 15 days. But, however, in the very same show cause notice, the petitioner has been called upon to appear before the respondent on 28.11.2022 at 03:00 p.m. either through physical / virtual hearing. Having given time for the petitioner to submit a reply within a period of 15 days from 21.11.2022 at 18:17:33 hrs, the respondent ought not to have called the petitioner for physical / virtual hearing on 28.11.2022 at 03:00 p.m. within a period of seven days from 21.11.2022 being the date of the show cause notice.

4. The petitioner has also submitted a reply thereafter on 02.12.2022 to the show cause notice dated 21.11.2022 sent by the respondent at 18:17:33 hrs. In the reply dated 02.12.2022, the petitioner has also sought for a personal hearing. However, as seen from the impugned assessment order, no personal hearing has been afforded to the petitioner and the objection raised by the petitioner in its reply dated 02.12.2022 has also not been considered.



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5. Learned standing counsel appearing for the respondent has also received instructions and does not dispute the statements made by the petitioner in the Affidavit filed in support of this Writ Petition with regard to the dates and events referred to supra. Therefore, it is made clear that the principles of natural justice has been violated by the respondent before passing of the impugned order rejecting the petitioner's application seeking for refund.

6. Hence, the impugned order has to be quashed and the matter has to be remanded back to the respondent for fresh consideration on merits and in accordance with law, within a time frame to be fixed by this Court.

7. Accordingly, the impugned order is hereby quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order, after adhering to the principles of natural justice and by affording a personal hearing to the petitioner.



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8. Accordingly, this Writ Petition is disposed of. No Costs.

Consequently, the connected Writ Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
ab



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To
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ABDUL QUDDHOSE. J.,

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**01.02.2023
(1/2)**