

CWP-29994-2022 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-29994-2022 (O&M)
Date of decision:-31.08.2023

M/S SELMEC ENGINEERING CONSTRUCTION

.... Petitioner

VS

THE COMMISSIONER, CGST, ROHTAK AND ORS.

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. J.S. Bedi, Advocate for the petitioner.

Mr. Sourabh Geol, Senior Standing Counsel
for the respondents.

Ritu Bahri, J. (Oral)

Petitioner is seeking quashing of the impugned order in appeal dated 26.09.2022, Annexure P-7, which he has received on 04.10.2022 passed by respondent No.2 in appeal dated 06.09.2021, Annexure P-6 filed by the petitioner against the ex parte adjudication order dated 24.03.2021, Annexure P-3 whereby respondent No.3 had raised a demand of service tax along with interest and penalty amounting to Rs.1,89,19,518/- .

2. The petitioner has challenged these orders on the ground that pursuant to the show cause notice dated 23.10.2020, Annexure P-1, which was received by him, he was never given opportunity to appear and without giving opportunity of hearing, the impugned order

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has been passed by the Adjudicating Authority which has been sent to him by way of e-mail, Annexure P-5.

3. Upon notice of this petition, written statement has been filed by the respondents. Along with written statement, they had placed on record, copy of the letters dated 18.02.2021, 03.03.2021 and 17.03.2021 sent to the petitioner, Annexure R1/1. These letters were sent to avail personal hearing through video conferencing and give the mobile number to send the link of video conferencing for conducting personal hearing.

4. Learned counsel for the petitioner submits that these letters were never received by him as there is no proof of postal receipt placed by the respondents to prove that these letters were posted to the petitioner. At the same time, respondents along with the written statement has placed on record postal receipt Ex.R1/2 dated 28.10.2020 to show that show cause notice was sent by way of post and was duly received by the petitioner. This fact has not been disputed by the petitioner that show cause notice was received by him. The only grievance of the petitioner is that he was never given opportunity of hearing. Respondents have also placed on record Ex.R1/3, copy of receiving whereby show cause notice was received manually also. Learned counsel for the petitioner has placed on record copy of the impugned order, Annexure P-5, which was sent to him by way of e-mail on 29.06.2021. His main argument is that if the impugned order could have sent to him by e-mail, the letters

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Annexure R1/1 could also have been sent to him by e-mail and he could have availed the opportunity of personal hearing by giving his mobile number so that he could appear through video conferencing as in the year 2021 Covid was prevailing and the only efficacious remedy of taking opportunity of hearing was through video conferencing. Despite the fact that the respondents had sent the show cause notice vide postal receipt, which was received by the petitioner and even the impugned order sent by way of email as is evident from Annexure P-5, has been received by the petitioner, the impugned order is liable to be set aside on the ground that opportunity of personal hearing was never given to the petitioner as letters Annexure R1/1 were never received by him.

5. Accordingly, instant writ petition is allowed. Impugned orders Annexures P-3, P-6 and P-7 are set aside. However the respondents can proceed with the show cause notice, Annexure P-1 by giving opportunity of personal hearing to the petitioner and thereafter pass a speaking order.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

31.08.2023
pooja saini

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No