IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7916 OF 2024

Chandrachud Dhondiram Dhorkule
Age: 52 years, Occu. Service,
Proprietor of Texmo Customer Services,
32, Ground Near Water Tank,
Bhushan Nagar, Kedgaon,
Ahmednagar – 414 005 … **PETITIONER**

VERSUS

1. Union of India
Through its Joint Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi – 110 001

2. Principal Commissioner of CGST & C.Ex.
Nagpur-I Commissionerate,
elengkhedi Road, Civil Lines,
Nagpur 400 001 … **RESPONDENTS**

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Mr. Nitin Chopra, Advocate h/f Swamy Associates, for the Petitioner
Mr. S. W. Munde, Advocate for Respondent No.1
Mr. D. S. Ladda, Advocate for Respondent Nos. 1 and 2

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CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 02.08.2024

ORAL JUDGMENT (Per- Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The learned Advocate for the Petitioner Shri Nitin Chopra, representing Swami Associates, has addressed us via Video Conferencing from Mumbai, yesterday and today.

3. There is no dispute that under Section 86 of the Finance Act, 1994, the Petitioner has to file an appeal before the Customs, Central Excise and Service Tax Appellate Tribunal (CESTAT), at Mumbai. As a pre-condition for preferring the appeal, the aggrieved party has to deposit 7.5% of the duty amount which is assessed by the impugned order. The Petitioner has approached this Court, directly.

4. In the light of the facts which we would be considering in the paragraphs to follow and the law laid down by the Hon'ble Supreme Court in ***Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and others, 2023 SCC OnLine SC 95***, we are entertaining this Petition.

5. The primary reason for entertaining this Petition is on account of the lack of opportunity of hearing to the Petitioner in the case for determination of value of services and the service tax liability. The Petitioner received the show cause cum demand notice dated 21.04.2021, from the office of the Commissioner of CGST and CX,

Nashik. In response to the same, the Petitioner tendered a reply vide a communication dated, nil. The learned Advocate for the department submits on instructions that the department received the said reply. It is obvious that the Petitioner did not seek an opportunity for physical hearing or through the virtual mode, in addition to the reply that was tendered to the show cause notice, dated 21.04.2021.

6. The learned Advocate for the department submits that the department was expected to pass a final order within one year from the date of the reply of the Petitioner. It is conceded by the department that after receiving the reply of the Petitioner, an order could not be passed within the statutory period of one year. It is, therefore, submitted by the department that further opportunity of hearing had to be given to the Petitioner.

7. Shri Ladda, the learned Advocate strenuously submits that the reply of the Petitioner would clearly indicate the casualness on the part of the Petitioner in tendering the reply. Though certain documents were enclosed, there was no request for presenting witnesses. There was no request for a personal physical hearing.

There was no request for a virtual hearing. It is only on account of the lapse on the part of the department in not delivering an order within one year, that the department issued further notices for personal hearing.

8. Shri Chopra quickly responds to the above submissions of Shri Ladda by submitting that the department, after undergoing bifurcation, shifted to Nagpur. The business of the Petitioner is situated at Ahmednagar, which was amenable to the jurisdiction of the office of the Commissioner CGST and CX, Nagpur-I Commissionerate, CGST Bhavan at Nagpur.

9. The Petitioner concedes that the first intimation of personal hearing dated 16.11.2023, was received by the Petitioner. It is specifically set out that the personal hearing was fixed only by the virtual mode through video conferencing. This was intimated to the Petitioner by Shri Atul P. Mahajan, Superintendent (Adjudication), CGST and Central Excise, Nagpur-I, Commissionerate. His grievance is that no link was supplied for addressing the Principal Commissioner, Central GST and Central Excise. He has e-mailed to the department indicating that he has not received the link for video

conference hearing. A further notice dated 30.11.2023, again listing the matter for a personal hearing by virtual mode was scheduled on 08.12.2023. The e-mail address for correspondence was given, but the link was not supplied. Again the Petitioner prayed for a link. A third notice was issued by Shri Atul P. Mahajan dated 13.03.2023, again scheduling the hearing by video conferencing on 19.03.2023. Yet, again the link was not furnished. The Petitioner interacted with Mr. Mahajan through WhatsApp video and every time informed him that he has not received the link.

10. It is in the above circumstances, that the department delivered an order on 28.03.2024, which is assailed by the Petitioner. The total service tax including cess liability for the period October 2015 to March 2016 and for the financial year 2016 to 2017, was an amount of Rs.3,29,60,809/-. This Petition has been filed on 02.07.2024, which is after three months and one week. It is an admitted position that an appeal has to be filed before the CESTAT within 90 days from the date of the communication of the order. The parties concede before us that the Tribunal has the power to condone the delay beyond 90 days.

11. In the light of the peculiar facts as recorded above, we are of the view that the ends of justice would be met by granting the Petitioner an opportunity to appear before the Principal Commissioner, Central GST and Central Excise, Nagpur-I, Commissionerate, for a re-hearing in the matter with relation to the show cause notice dated 21.04.2021. To balance the equities, we deem it appropriate to direct the Petitioner to deposit 5% of the amount which is assessed towards service tax by the impugned order dated 28.03.2024.

12. In view of the above, **this Writ Petition is partly allowed**. The impugned order dated 28.03.2024, is set aside on the following conditions and a re-hearing shall occur before the Principal Commissioner, Central GST and Central Excise, Nagpur-I, Commissionerate, Nagpur, on the following conditions:-

(a) 5% of the amount of taxes as assessed in the impugned order, shall be deposited by the Petitioner before Respondent No.1, within 30 days from today.

(b) A hearing shall be arranged in the office of Respondent No.2 with reference to the show cause notice dated 21.04.2021, on 11.09.2024 at 3.00 p.m.

(c) Since the Petitioner desires to tender physical documents and prays for a physical hearing, such hearing will be conducted in physical form and the Petitioner, with legal assistance, will participate on the date and time before the concerned authority. Hence, a link for virtual hearing need not be granted.

(d) If the Petitioner remains absent in the hearing, the amount deposited shall be adjusted against the dues and the impugned order dated 28.03.2024, would thereafter stand restored.

(e) When the hearing takes place on 11.09.2024, the concerned authority shall follow the due procedure laid down in law and after the hearing is concluded, either on the same day or in a subsequent hearing, a reasoned order shall be passed thereafter. All contentions of the litigating parties are kept open.

(f) If the amount of 5% is not deposited, the matter shall stand closed and the order dated 28.03.2024, shall stand restored.

13. Rule is made absolute in the above terms.

[Y. G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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