IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13324 OF 2024

M/s. Noble Carrying Corporation,
Sy. No. 321, N.H. 09,
Omerga, Dist. Osmanabad – 413 606
Through its Partner,
Mohiyaddin Sultan
Age – 46 years, Occ. Business
R/o Old RTO Check Post NH 65,
Opp. Reliance Petrol Pump, X Road,
Omerga, Tq. Omerga, Dist. Osmanabad .. Petitioner

Versus

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

2] The Commissioner of CGST & C. Ex.,
Aurangabad,
N-5, Town Centre, CIDCO,
Aurangabad – 431 003 .. Respondents

...
Advocate for petitioner : Mr. Alok Sharma
Respondent no. 1 – served – absent.
Advocate for the respondents no. 2 and 3 : Mr. D.S. Ladda
...

CORAM : MANGESH S. PATIL &
PRAFULLA S. KHUBALKAR, JJ.

DATE : 9 DECEMBER 2024

ORDER (MANGESH S. PATIL, J.) :

Heard Mr. Sharma for the petitioner and Mr. Ladda for respondents no. 2 and 3. The petitioner, a partnership firm carrying on the business, is coming with following prayers :-

"(B) That the show cause cum demand notice bearing No.48/ST/COMMR./JD/OR/2021-22 dated 21.4.2021 may kindly be quashed and set aside.

(C) That the Hon'ble Court may kindly quash and set aside the impugned order bearing no. 28/ST/COMMR./SB/2024-2025 dt. 9.10.2024 passed by Respondent No.2."

2. Learned advocate Mr. Sharma, apart from making submissions as to how taking into consideration the goods carriage being undertaken by the petitioner for transportation of agricultural produce and cement, was not liable for registration under section 69 of the Finance Act, 1994, would submit that the impugned show cause notice dated 21-04-2021 was based on information regarding value of the net turnover of the taxable services as declared by an assessee to the department of Income Tax for the year 2015-16. Based on that, the petitioner has been served with the impugned show cause notice.

3. Mr. Sharma would submit that pursuant to section 73, no such action could have been initiated and the respondent – Commissioner had no power and jurisdiction to issue such notice in respect of a period beyond 5 years. He would submit that there is no proof regarding fraud or collusion so as to extend the period from 30 months to 5 years. He would, therefore, submit that even if there is a statutory remedy of preferring an appeal under rule 6 of the Central Excise (Appeals) Rules, 2001, the petitioner cannot be relegated to the remedy under Rule 9 of the Service Tax Rules, 1994. The impugned

order was passed without following principles of natural justice as laid down in the matter of ***M/s Godrej Sara Lee Limited Vs. The Excise and Taxation Officer-Cum-Assessing Authority and others; AIR 2023 S.C. 781***.

4. Mr. Sharma would additionally submit that no proper intimation regarding personal hearing was given. E-mail address received from the Income Tax Department was used for sending communication and the petition be entertained.

5. Learned advocate Mr. Ladda for respondents no. 2 and 3 would submit that in the light of availability of statutory remedy of appeal before the tribunal, the petition is not maintainable. Respondent – Commissioner has considered all the aspects and has passed a reasoned order. Appellate authority can consider every argument and stand being taken by the petitioner.

6. He would also submit that in spite of communication, the petitioner did not attend the personal hearing. It was a clear matter of wilful suppression of the facts. If at all the petitioner was claiming exemption, he could have specifically responded to the show cause notice and should have substantiated his stand by producing all the account books. He did not co-operate. Faced with the situation, there was no alternative for the Commissioner but to pass the order. He

would submit that petitioner ought to have filed the returns for failure of which he cannot be allowed to now evade the liability. Independently, the tribunal in the statutory appeal, can consider all the aspects.

7. We have considered the rival submissions and perused the papers.

8. With respect, the parameters laid down in ***M/s. Godraj Sara Lee*** (supra) which in turn were based on catena of judgments would govern the field and regulate the powers of the High Court under Article 226 of the Constitution of India. It is not the issue regarding maintainability but entertainibility. When there is admittedly a statutory remedy, when the petitioner had not co-operated the Commissioner pursuant to the show cause notice and had not produced anything before him, it would be a rather spacious plea now to point out the defect in the show cause notice and take exception to the order. It is not that he had allowed the Commissioner to decide something on merits but the latter was compelled to do so for want of such co-operation more importantly, non production of all the requisite record / documents / accounts. Even if it is his stand that the show cause notice is not maintainable, even that aspect can be agitated before the tribunal in the statutory appeal.

9. We, therefore, dismiss the petition with liberty to the petitioner, to resort to the statutory remedy of appeal to the tribunal.

10. Time spent in prosecuting the present remedy, may be considred by the tribunal.

[PRAFULLA S. KHUBALKAR]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/