IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8928 OF 2023

M/s. Reliance Integrated Services Pvt. Ltd. ...Petitioner
Vs.
Commissioner of CGST & Central Excise, Belapur ...Respondent

Mr. Vinay Shroff with Mr. Devakinandan Singh i/b. Mr. Nikhil Rungta for Petitioner.
Mr. Y. R. Mishra with Mr. Padmakar Parkar for Respondent.

CORAM : G. S. KULKARNI &
KISHORE C. SANT, JJ.
DATE : MARCH 19, 2024.

P.C.:

1. This petition under Article 226 of the Constitution of India is filed praying for the following reliefs:-

> "(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned Order-in-Original No. 06/MA/Commissioner/Belapur/ 2021-2022 dated 13.05.2021 passed by the Commissioner, CGST & Central Excise, Belapur Commissionerate (Exhibit 'A') and after going into the validity and legality thereof to quash and set aside the same.
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> (b) that pending the hearing and final disposal of this Writ Petition, the Respondent, his successors in office, subordinates, servants and agents be restrained by an order and injunction of this Hon'ble Court to refrain from taking any steps or proceedings whatsoever for or in relation to the enforcement of the impugned Order-in-Original No.06/ MA/Commissioner/Belapur/2021-2022 dated 13.05.2021 passed by the Commissioner, CGST & Central Excise, Belapur Commissionerate.
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> (c) for ad-interim and interim reliefs in terms of prayer clause(b) above."

2. The primary contention as urged on behalf of the petitioner in assailing the order-in-original dated 13 May, 2021 passed by the Commissioner, CGST & Central Excise, Belapur-respondent is that the same has been passed in breach of the principles of natural justice.

3. We find much substance in the contention as urged on behalf of the petitioner as such infirmity is glaring and apparent on the face of the order. This for the reason that in paragraph 11 of the impugned order, the respondent has stated that the personal hearing was granted to the petitioner on 09 March, 2021, 05 April, 2021, 22 April, 2021 and 05 May, 2021, however, there is no iota of material that on such dates, hearing was granted to the petitioner. In fact, the show cause notice itself is dated 26 June, 2020 which was issued during the period of pandemic when the entire country was under a lock-down. Certainly, the petitioner was not granted an opportunity of being heard before an order adverse to the petitioner was passed.

4. This apart, it is seen from the record that the impugned order was never served on the petitioner. In fact, in the writ petition, the petitioner has made a clear statement that the impugned order was never served on the petitioner by the respondent and that the petitioner received a photocopy of the impugned order-in-original on 09 February, 2023 by hand delivery from the office of the Deputy/Assistant Commissioner, CGST and Central Excise, Belapur Division – IV, to whom a copy of the same was marked by the respondent and accordingly, the petitioner had become aware of the impugned order-in-original for the first time on 09 February, 2023 and immediately thereafter the petitioner filed this petition.

5. It is also clear that the impugned order has been passed during the period of the second lock-down as declared in view of the Covid-19 pandemic. In this context, learned senior counsel for the petitioner has also drawn our attention to the orders passed by the Supreme Court in the proceedings of Suo-moto Writ Petition (C.) No. 3 of 2020 wherein the Supreme Court, taking cognizance of the situation where the parties would not be in a position to take recourse to legal remedies, had extended the period of limitation.

6. Having heard learned counsel for the parties and having perused the reply affidavit, we are of the clear opinion that the respondent before passing the impugned order, ought to have adopted the procedure not only to serve the show cause notice in the manner known to law, but also grant a fair and sufficient opportunity to the petitioner by issuing appropriate notices and only after granting an opportunity of a hearing and placing of all materials on record, an endeavour should have been made to pass appropriate orders. The principles of law in this regard are well settled. Thus, as the impugned order is passed in breach of the principles of natural justice, the same cannot be sustained.

7. In the aforesaid circumstances, we are inclined to dispose of this petition by the following order:-

ORDER

i. The impugned order-in-original dated 13 May, 2021 passed by the Commissioner, CGST & Central Excise, Belapur-respondent is quashed and set aside.

ii. The proceedings are remanded to the respondent for fresh orders to be passed after hearing the petitioner.

iii. The petitioner is directed to place on record its reply to the show cause notice with all materials within a period of three weeks from today.

iv. After such reply is filed, the respondent shall fix an appropriate date to hear the petitioner and proceed to pass appropriate orders within a period of three weeks from the date of hearing.

v. All contentions of the parties in that regard are expressly kept open.

vi. The petition is disposed of in the aforesaid terms. No costs.

[KISHORE C. SANT, J.] [G. S. KULKARNI, J.]