IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8965 OF 2023

Fino Paytech Limited ...Petitioner
Vs.
Union of India, through The Secretary,
Ministry of Finance & Anr.
...Respondents

Mr. Arun Jain i/b Mr. Karthi Vig, for Petitioner.
Mrs. Shehnaz V. Bharucha a/w Ms. Kavita Shukla, for Respondent.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.

DATE: 1 APRIL, 2024.

P.C.

1. This petition under Article 226 of the Constitution of India has been filed praying for the following substantive 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, order or direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner's case and after going into the validity and legality thereof to quash and set aside the (i) show-cause-notice No. Commr/Bel-II/R- II/CBDT 15-16/ Fino/3 dated 30.12.2020 issued by the Respondent No. 2 [Exhibit "A"]; and (ii) Order-in-Original No. Commissioner/Belapur/2022-23 21/RB/ dated 30.08.2022 [Exhibit "B"] passed by the Respondent No. 2 adjudicating the said show-cause-notice No. Commr/Bel-II/R-II/CBDT 15- 16/ Fino/3 dated 30.12.2020;
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> (b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No. 2 by himself, his subordinates, servants and agents to forthwith withdraw/cancel the (i) show-cause-notice No. Commr/Bel-II/R-II/CBDT 15-16/

> Fino/3 dated 30.12.2020 issued by the Respondent No. 2 [Exhibit "A"]; and (ii) Order- in-Original No. Commissioner/Belapur/2022-23 21/RB/ dated 30.08.2022 [Exhibit "B"] passed by the Respondent No. 2 adjudicating the said show-cause-notice No. Commr/Bel-II/R-II/CBDT 15-16/Fino/3 dated 30.12.2020;"

2. Insofar as the challenge to the show-cause-notice dated 30 December 2020 is concerned, the learned counsel for the petitioner submits that he would not press for the said relief, as already an order-in-original as impugned dated 30 August 2022 is passed which is also assailed in the present proceedings. The primary ground on which the order-in-original is assailed is that the same has been passed ex-parte to the petitioner and in breach of the principles of natural justice.

3. Learned counsel for the petitioner has drawn our attention to the documents as placed on record and submitted that the petitioner had in fact changed its address at the relevant time on two occasions, firstly, on 23 October 2019 and thereafter on 5 December 2019. It is his contention that change in such address was also effected on the GST portal and which is an admitted position. It is his submission that therefore the last valid address of the petitioner was as of 5 December 2019.

4. It is submitted that the show-cause-notice was issued on 30 December 2020 which was almost after one year from the date in the change of address. The show-cause-notice was issued to the petitioner on an address which was in fact the address prior to even the first change of petitioner's address which was effected on 23 October 2019 on the GST portal. It is thus submitted that as the show-cause-notice itself was not served on the petitioner or received, the petitioner could not participate in the adjudication of the show-cause-notice and eventually, the adjudicating officer proceeded to adjudicate the show-cause-notice while passing the ex-parte order-in-original.

5. Our attention is also drawn by learned counsel for the petitioner to the reply affidavit of Mr. Mohanan A., Assistant Commissioner, CGST & Central Excise, Belapur Commissionerate, dated 18 January 2023 wherein in paragraph 5 (b) of the reply affidavit the following statement has been made :-

> 7. ….. ….. ….. It is only in the GST portal, that they have amended the address twice on 23.10.2019 and 5.12.2019. Therefore, under the bonafide belief that the petitioner is still operating from the address mentioned in the show-cause-notice, and with no specific mention to address all future correspondence to the new address, PH letters were sent to the address mentioned in the SCN only."

6. It is thus submitted that the impugned order adjudicating the show-cause-notice is in breach of the principle of natural of justice, and is required to be set aside and the proceedings be remanded to the Adjudicating Officer for a fresh order to be passed after granting an opportunity to the petitioner to file a reply affidavit to the show-cause-notice and after hearing the petitioner.

7. On the other hand Mrs. Bharucha, learned counsel for the respondent has opposed this petition. She has relied on the reply affidavit as filed on behalf of the respondent. Our attention has been drawn to the averments as made in the reply affidavit that in fact the petitioner did not respond to the notices and had sought an adjournment on 30 June 2022, 20 June 2022 and 4 July 2022. However, it is not clear from the reply affidavit as to whether the show-cause-notice was validly served on the petitioner in a manner as known to law on the valid address of the petitioner.

8. Having heard learned counsel for the parties and having perused the record, in the facts and circumstances of the case as noted hereinabove, we are of the opinion that it would be in the interest of justice that the proceedings are remanded to the Adjudication Officer as in our opinion, there is clearly a breach of principles of natural justice as the petitioner was not granted an opportunity of being heard or even to file a reply to the show-cause-notice before the order-in-original was passed by the Adjudicating Officer which was admittedly an ex parte order. Certainly, the law would mandate that a show-cause-notice is issued to the parties before any order is passed on the same. In the present case, the petitioner had made appropriate amendments on the GST portal, in view of change of its address which was on 23 October 2019 and 5 December 2019 as also admitted by the respondents in the reply affidavit. It clearly appears that the show-cause-notice was forwarded to the petitioner at an address which was in fact prior address before change of its address effected on 23 October 2019. Thus, the show-cause-notice was not served on the petitioner, consequently the same was not replied and / or the petitioner could not put up a valid defence. In these circumstances, even if, the petitioner had become aware of the adjudication proceedings, for want of the show-cause-notice being served on the petitioner, the petitioner certainly was not in a position to proceed before the Adjudicating Officer. We are, therefore, of the clear opinion that this is a case which has resulted in breach of principles of natural justice in passing of the impugned order.

9. Mrs. Bharucha, learned counsel for the respondent has also raised an objection that as the petitioner has an alternate remedy to assail the order in an appeal, hence, the Writ Petition under Article 226 in the present circumstances be not entertained. We are, however, not in agreement with Mrs. Bharucha, considering catena of judgments of the Supreme Court on this issue which lay down that in the event there is breach of principles of natural justice, the High Court can exercise jurisdiction of Court under Article 226 of the Constitution despite an alternate remedy being available. In this context we may refer to a decision of a recent origin of a three Judge Bench of the Supreme Court in **Kalpraj Dharmshi And Anr. Vs. Kotak Investment Advisors Limited**

and Anr.[1] wherein the Supreme Court has reiterated such position after considering several decisions on such issue. The Supreme Court in paragraph 75 of the decision has made the following observations:

> "75 It has been clearly held, that when the proceedings invoked before a statutory authority are dehors the jurisdiction or when they are in breach of principles of natural justice, the party would be entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution."

10. In view of the above discussion, we are inclined to partly allow this petition by the following order :-

ORDER

i) The impugned order-in-original dated 30 August 2022 (Exhibit-B) is quashed and set aside.

ii) Proceedings stand remanded to the Adjudicating Officer, namely, the Commissioner, CGST & Central Excise, Belapur Commissionerate.

iii) The petitioner shall place on record the reply to the show-cause-notice along with the appropriate documents within a period of four weeks from today.

iv) After reply is filed, the Commissioner shall fix a convenient date for hearing the petitioner and proceed to pass an order within a period of eight weeks from the date of hearing.

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1 (2021) 10 SCC 401

iii) All contentions of the parties on the adjudication of the show-cause-notice are expressly kept open.

iv) Petition stands disposed of in the aforesaid terms. No costs.

(FIRDOSH P. POONIWALLA, J.) **(G. S. KULKARNI, J.)**