

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.6179 OF 2024

Mediacom Communications India Private Limited .. Petitioner

Versus

The Union of India & Ors. .. Respondents

Mr.Rohan P. Shah, Senior Advocate a/w Mr. Sudipta Bhattacharjee, Ms. Anishkta Gupta, Mr.Mohammed Anajwalla and Mr. Chayank Bohra i/by Khaitan & Co. for the petitioner.

Mr. Jitendra Mishra a/w Mr. Ram Ochani i/by Mr. Ashutosh Mishra for respondent no.1.

Ms. Shruti Vyas, Addl. G. P. a/w Ms. Dhruvi Kapadia, AGP for the State.

CORAM : M. S. Sonak &

Jitendra Jain, JJ.

DATE : 11 December 2024

P.C. (Per M. S. Sonak, J.) :-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.

The petitioner challenges the Order-in-Original dated 31 December 2023. Though an appeal lies against this order, considering the order already made by us on 20 June 2024 in Writ Petition No.6181 of 2024 and CBIC Circular No.230/24/2024-GST dated 10 September 2024, we propose to remand the matter to 3rd respondent for fresh adjudication of the show cause notice issued to the petitioner. Accordingly, there is no point in relegating the petitioner to the alternate remedy.

3. Mr. Rohan Shah learned Senior Advocate for the petitioner, has submitted that several grounds were raised on behalf of the petitioner. Still, most of those grounds and submissions in support thereof have not been considered by the 3rd respondent when making the impugned order.

He submitted that the impugned order relies upon and almost verbatim reproduces the contents of another order dated 11 August 2022 made by the Deputy Commissioner, East-II Division, CGST, Gurugram. On instructions, he submitted that the petitioner was not even confronted with this order and was given an opportunity to make their submissions.

4. Ms. Chavan learned Additional Government Pleader contests the above contentions and submits that because the agreements were standard, there is nothing wrong with the same reasonings.

5. At this stage, we are not deciding the rival contentions on merits. However, noting our order dated 20 June 2024 in Writ Petition No.6181 of 2024, we think that we should also adopt the same course and set aside the impugned order and remand the matter to the 3rd respondent for reconsideration of the entire matter afresh by providing full opportunity of hearing to all the parties.

6. Another reason for adopting the above course of action is the CBIC Circular dated 10 September 2024, which, according to Mr Shah, will also impact the proceedings in the show cause notice, and the same was not available while passing the Order-in-Original.

7. Ms. Chavan has her interpretation of the Circular. But, as we clarified, we are not considering rival contentions or interpretations at this stage. Suffice to state that the petitioner should have an opportunity to place the Circular dated 10 September 2024 before the 3rd respondent and persuade him regarding its applicability. A similar opportunity will also be available to the respondents to contend otherwise.

8. Mr. Shah submits that the petitioner has requested the concerned respondent to furnish copies of the statements of employees recorded under Section 70 of the SGST Act to respond to show cause in the proceedings effectively.

9. Ms. Chavan, on instructions, states that such statements will be provided to the petitioner within two weeks of uploading this order.

10. Ms. Chavan states that the respondents also require certain agreements, invoices and payment details from the petitioner. She states that a list would be furnished to the petitioner within two weeks of uploading this order. Mr. Shah states that the petitioner will supply the necessary details as may be sought within two weeks of receiving such intimation.

11. The above statements made by the respective counsel are recorded and accepted.

12. The impugned order dated 31 December 2023 is quashed and set aside. The matter is remanded to the 3rd respondent for fresh consideration. The 3rd respondent should give all parties the opportunity to hear and consider the materials they produced in the proceedings. The 3rd respondent will decide the matter as expeditiously as possible by passing a reasoned order.

13. All parties' contentions on merits are explicitly left open as this Court has not examined such rival contentions.

14. The rule is made absolute in the above terms without any cost order. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)