IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18012 OF 2024

Surinderpal Chamanlal Aggarwal HUF
(Metals and General Trading Co.)
904, 9th floor, G-Square Business Park,
Sanpada, Navi Mumbai,
Thane – 400705 .. Petitioner

Versus

1. State of Maharashtra
Notice to be served through
Ministry of Finance,
Department of Goods and
Service Tax, Maharashtra

2. Commissioner of State Tax
GST Bhavan, Mazgaon,
Mumbai-400010

3. Assistant Commissioner of
State Tax Sakinaka_602
2nd floor, New Building,
Cabin No.F-13, GST Bhavan,
Nodal Division-12,
Mazgaon, Mumbai-40010 .. Respondents

Mr. Prasanna Namboodiri a/w Ms. Tejal Darekar a/w Ms. Pratibha Namboodiri a/w Mr. Rishabh Sinha a/w Ms. Pallavi Dabak for the petitioner.
Ms. S.D.Vyas, Addl. GP a/w Ms. P. N. Diwan, AGP for respondents.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.
DATE : 9 December 2024

ORAL JUDGMENT (Per M. S. Sonak J) :-

1. Heard learned counsel for the parties.

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

3. This petitioner challenges the Order-in-Original dated 30 April 2024 made by the Assistant Commissioner of State Tax (State GST).

4. The petitioner has incorrectly stated the non-availability of alternate and efficacious remedies. The learned counsel for the petitioner accepts that a clear averment should have been made that an alternate remedy was available and explained why the same was not efficacious in the facts of the present case.

5. However, the learned counsel for the petitioner submits that this petition contains averments that show the impugned order was made in gross violation of the principles of natural justice and fair play. He submits that if a violation of these principles is established, the Writ Court does not normally insist on the petitioner availing himself of an alternate remedy.

6. The learned counsel for the petitioner points out that the impugned order refers to several documents. Still, the first three documents, which are extensively relied upon and even quoted in the impugned order, were neither referred to in the show cause notice nor

were the copies of such documents ever supplied to the petitioner. He submits that, as a result, the petitioner had no opportunity to deal with these documents, though the impugned order extensively relies upon the same. This, he submits, amounts to a gross violation of natural justice and fair play.

7. Ms. Vyas, learned Addl. GP, refers us to the Affidavit of Mr. Sanjay Nikam, Joint Commissioner of State Tax, and points out that during the final hearing, Mr. Jagdish Gokhle (STP) was made aware of certain statements. Therefore, this cannot be a case of breach of natural justice.

8. Ms. Vyas submitted that the main issue was the petitioners' supplier, Jash Dealmark Limited, being the Non-genuine Tax Payable (NGTP). She submitted that this aspect was made clear in the show cause notice, and it was for the petitioner to establish that the petitioners' transactions with Jash Dealmark Limited were genuine. She submits that the petitioner was given a full opportunity to establish this factor. Therefore, she submits that this is not a case of violation of natural justice.

9. The rival contentions now fall for our determination.

10. The impugned order refers to the following documents at the very outset;

References-

(1) Letter of Office of the Principal Commissioner of Central GST,

Mumbai South located at 13th & 15th floor, Air India Building, Nariman Point, Mumbai-400021 having Reference no F.No. V/CGST/M.South/A.E /Maa Jasol/483/2018, Mumbai, 29 September, 2020.

(2) Revision Order For Cancellation of Registration (Ab-Initio) of M/s Jash Dealmark Ltd (GSTIN- 27AACCI8984F1Z4) issued by the Office of the Joint Commissioner of State Tax (MUM-VAT-F-601) LTU- 1, 3rd floor, Old Building, GST Bhavan, Mazgaon-400010. Having Reference-no. JC-LTU-1/Jash Dealmark Ltd/GST Revision/RC Cancellation order (ab-initio)/2021-22/b-592, Dt. 13.04.2022 & RC Status details of M/s M.S. TRADING CO.(GSTIN-07CWVPM1495E1ZO) whose RC Is cancelled ab-Initio w.e.f 01/07/2017 as per BO Portal.

(3) Investigation findings received In case of M/s METALS & GENERAL TRADING CO. having MVAT TIN- 27570959983V/C & GSTIN-27AAGHS3150M1ZU from the office of the Assistant Commissioner of State Tax, MUM-INV-D-050, INV-C, Cabin no. 06, G wing, 8th floor, New Building, Mazgaon, Mumbal-10.

(4) Intimation of tax ascertained as being payable under section 73(5)/74(5) r/w Rule 142 In FORM GST DRC-01A issued by this office ref. No: ZD270523046355E, Date: 25/05/2023 and served upon you through e-mail and common portal.

(5) Taxpayer's reply on Common portal in PART-B of GST-DRC-01A (Ref- ZD2706230488922 on 27.06.2023) Is received.

(6) Show cause Notice under Section 73 (1) r/w Rule 142 In FORM

GST-DRC-01 issued to taxpayer by this office having Ref. No-ZD2709230275480, dated-12/09/2023 and served upon you through e-mail and common portal.

(9) Taxpayer has uploaded explanation on Common portal in FORM GST-DRC-06 having Ref no. ZD271023010991R on 06.10.2023.

(10) Final hearing notice (u/s 75(4) of MGST & CGST ACT-2017) Issued to taxpayer on 03.04.2024 (Ref no-AC/SAKINAKA_602/NODAL-12/2018-19/HEARING NOTICE/2023-24/8-30, MUMBAI, DT-03/04/2024.)

11. Out of the above documents, the documents at Sr.No.1, 2 and 3 have been relied upon and even quoted extensively in the impugned order. Admittedly, such documents were neither referred to in the show cause notice nor were the copies of these documents ever furnished to the petitioner. The petitioner came to know of these documents or, rather, came to know that such documents were being used against him only after the receipt of the impugned order.

12. Since the above documents form a substantial basis of the impugned order as stated in the impugned order itself, the petitioner should have been furnished copies or at least made aware in the show cause notice that such documents were proposed to be used against the petitioner. Since this was not done, we agree with the learned counsel for the petitioner that there has been a failure of natural justice.

13. Ms Vyas had relied on the statement in Paragraph 7 (xi) of Mr.

Sanjay Nikam's affidavit, and the same reads as follows ;

> ***xi. During the final hearing Mr. Jagdish Gokhale (STP) was made aware about statement of Mr Shailendra J. Khona (Director of M/s Jash Dealmark Ltd.). As per his (Mr. Shailendra J. Khona) statement, M/s Jash Dealmark Ltd. is engaged in FMCG trading business. In guise of FMCG business, bogus/fake sale invoices were issued without actual movement of goods. Mr. Khona further stated that the recipients of this invoices make payments by the way of RTGS in to account of M/s Jash Dealmark Ltd and thereafter M/s Jash Dealmark Ltd deducting the commission of 2% & return the remaining amount in cash to the respective recipients of invoices. Mr. Gokhale argued that he didn't have any opinion on Mr. Khona's statement. He relied on his clients documents.***

14. Ms. Vyas admitted that Mr. Sanjay was not present during the final hearing of the matter before the Adjudicating Authority. Therefore, we fail to understand the basis of the above statement, which is now relied upon. Be that as it may, the petitioners' grievance relates to the first three documents referred to in the references in the impugned order. The affidavit is silent regarding the said three documents. Thus, based on the averments made in the affidavit or the contentions of Ms. Vyas, we cannot reject the petitioners' contention based upon the failure of natural justice.

15. Only on account of the failure of natural justice and without

adverting to the merits were set aside the impugned order dated 30 April 2024, and remand the matter of the adjudicating officer for fresh decision following law. However, the respondents must furnish the documents at Sr.No.1, 2 and 3 referred to in the references in the impugned order and any other material they may seek to rely upon or use against the petitioner. The copies of such documents must be furnished to the petitioner, and the petitioner must be allowed a reasonable opportunity to deal with or explain such documents. The petitioner must be given an opportunity for a hearing, and the final order must be reasoned.

16. All the contentions of all the parties on merits are, however left open since we have not adverted to the rival contentions on merits.

17. The Rule is made absolute in the above terms. The petition is disposed of without any cost order.

18. The interim order, if any, stands vacated. The interim application, if any, is disposed of.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**