Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1957 OF 2024

1. **Allot Communications India Pvt Ltd**,
a company infororated under the
provisions of the Companies Act, 1956
having its registered office at Plot No. A-1
Unit No. 502, Rupa Solitaire, Sector 1,
Millennium Business Park,
Mahape, Navi Mumbai, Thane 400 710.

2. **Mr Vishal Bham**,
Assistant Finance Controller of
Allot Communications India Pvt Ltd,
having office at Plot No. A-1, Unit No. 502,
Rupa Solitaire, Sector 1, Millennium
Business Park, Mahape, Navi Mumbai,
Thane 400 710. …Petitioners

VERSUS

1. **Union of India**,
the Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2. **The Commissioner of CGST**,
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai-400 614.

3. **The Asst. Commissioner of CGST & Central Excise, Belapur Division IV**
6th floor, CGO Complex
CBD Belapur, Navi Mumbai-400 614. …Respondents

APPEARANCES-

Mr Yogesh Patki, *with Jas Sanghvi (through VC) & Bhushan Kanchan, i/b, PDS Legal, For the Petitioners.*

Mrs Shehnaz Bharucha, *with SD Deshpande, For the Respondents.*

CORAM	**:**	**M.S.Sonak & Jitendra Jain, JJ.**
DATED	**:**	**15 October 2024**

ORAL JUDGMENT (*Per MS Sonak J*):-

1. Heard learned Counsel for the parties.

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

3. The Petitioner questions the order in Appeal dated 30 September 2022 by the Additional Commissioner Apples, rejecting the Petitioner's challenge to the order dated 7 January 2021 (2022) made by the Assistant Commissioner, Central Goods and Service Tax and Central Excise. By the order dated 7 January 2022, the Assistant Commissioner rejected the Petitioner's refund claim filed on account of ITC accumulated on account of export of services.

4. The record shows that on 29 December 2021, the Petitioner was served with a show cause notice proposing not to treat the service discharged by the Petitioner as an export service and, consequently, to reject the Petitioner's refund application. The Petitioner was granted 15 days to reply, but

surprisingly, the hearing was scheduled on the very next date, i.e., 30 December 2021.

5. Therefore, on 30 December 2021, the Petitioner appeared and sought time to file a reply. The Petitioner was granted time up to 6 January 2022 for filing the reply. The Petitioner filed a reply on 6 January 2022, in which the Petitioner specifically requested a personal hearing.

6. On 7 January 2022, the Assistant Commissioner passed an order rejecting the Petitioner's refund claim without bothering to grant the Petitioner an opportunity of hearing or even considering the Petitioner's reply.

7. We have perused the Assistant Commissioner's order dated 7 January 2022. The said order notes that the Petitioner has filed a reply to the show cause notice denying the allegations made therein. However, except for this statement, the Assistant Commissioner has considered none of the contentions raised by the Petitioner in the fairly detailed reply to the show cause notice. There is no justification for not granting any opportunity of hearing to the Petitioner even though the Petitioner specifically requested for such hearing.

8. In the show cause notice dated 29 December 2021, 15 days were granted to the Petitioner to submit a reply. Without any justification, this period was curtailed. In the curtailed period, the Petitioner did file a fairly detailed reply. That reply has not even been considered, and there is no justification for why no opportunity of hearing was granted to the Petitioner despite the Petitioner specifically requesting the same. All this

is sufficient to hold that there was a failure of natural justice in making the order dated 7 January 2022.

9. The appellate authority has not considered the challenge based on the failure of natural justice. Even the reasoning of the appellate authority does not align with the proposed reasons in the show cause notice. The Appellate Authority has addressed a point about which the Petitioner was never put to any notice in the show-cause notice served on the Petitioner. These are sufficient grounds to set aside the order dated 30 September 2022 made by the appellate authority.

10. For the above reasons, we set aside the Assistant Commissioner's order dated 7 January 2021 (2022) (Exhibit 'E5' in the paper book of this Petition) and the appellate authority's order dated 30 September 2022 (Exhibit 'A' in the paper book of this Petition). The matter is now remanded to the Assistant Commissioner to decide the Petitioner's refund claim as expeditiously as possible and, in any event, within two months from today. Given the Appellate Authority's order, the Petitioner may, if it chooses, file an additional reply within two weeks. The Assistant Commissioner must consider the Petitioner's reply to the show cause notice and the additional reply and give the Petitioner an opportunity to be heard and pass a speaking order.

11. At the outset, Ms Bharucha pointed out that the impugned order made by the appellate authority is appealable before the Central Goods and Service Tax Tribunal. However, the Tribunal is not functioning presently. Besides, this is a case of violation of principles of natural justice. Accordingly, in the

facts of the present case, we are unable to uphold the objection based on the availability of an alternate remedy.

12. However, all contentions of all parties are left open because we have interfered with the impugned orders primarily on the grounds of a flawed decision-making process and failure of natural justice. We have not examined the merits of the rival contentions.

13. The Rule is made absolute in the above terms. There shall be no order for cost.

14. All concerned must act on an authenticated copy of this judgment and order.

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