Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4500 OF 2024

Pepperfry Limited
Formerly Pepperfry Private Limited
Office at: Pepper fry House,
C/o MJ House, Survey 96A,
Next to UDHE House, Opp. Cipla
R & D Center, LBS Marg,
Vikhroli (W), 96 A 2 pt 40 B
Mumbai – 400083
Through its Authorized
Representative
Jyoti Mishra …Petitioner

Versus

1. **Union of India**
Through the Secretary
Department of Revenue,
Ministry of Finance,
North Block, New Delhi – 110 001

2. **State of Maharashtra**
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Mantralaya, Mumbai – 400 001

3. **Central Board of Indirect Taxes and Customs,**
Ministry of Finance,
North Block, New Delhi – 110 001

4. **Assistant Commissioner State Tax,**
(D-031), Investigation – A, Mumbai
Nodal – 7, Mazgaon, 6th Floor Cabin
G-06, New Building,

GST Bhavan, Mumbai 400010 …Respondents

Mr Bharat Raichandani, a/w Adv Amon Mishra i/b UBR Legal, for the Petitioner.
Ms Jyoti Chavan, Addl. GP, for Respondents 2 and 4 (State).

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 11 October 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 and consent of the learned counsel for the parties.

3. On instructions, Mr Raichandani, learned counsel for the petitioner, states that the relief in terms of prayer clauses (b) and (c) will not be pressed at this stage and in this petition. Accordingly, we leave the issue of the constitutional validity of Section 16(2)(c) of the CGST/MGST Act open to be considered in an appropriate case.

4. The petitioner challenges the order dated 03 July 2023 made by the 4th respondent inter alia on the ground that the same violates the principles of natural justice and fair play. Mr Raichandani submits that the impugned order was made without giving the petitioner an opportunity of hearing. Mr Raichandani states that the petitioner had filed a reply to show cause notice on 21 June 2023, but the impugned order still states that the petitioner had not filed a reply. Therefore, he submits that this is a case of failure even to consider the reply filed by the petitioner, thereby breaching the principles of natural justice and fair play.

5. Ms Chavan learned Addl. GP, for the respondents, submits that there was no failure of natural justice in this case. She refers to the show cause notice dated 10 April 2023, in which it was clarified that the petitioner may, if it so chooses, file its response within 30 days. Further, the show cause notice specified the date, time, and venue of the personal hearing. She submitted that the petitioner did not even bother to file any reply within the 30 days, let alone attend the personal hearing. Ms Chavan submits that in these circumstances, the petitioner cannot complain of any failure of natural justice.

6. Mr Raichandani, by way of rejoinder, submitted that the show cause notice dated 10 April 2023 was uploaded on the TCS portal and not on the petitioner's assigned portal. Ms Chavan learned Addl. GP, however, disputes this position.

7. The rival contentions now fall for our determination.

8. In this case, the show cause notice dated 10 April 2023 required the petitioner to file a response within 30 days. The notice clearly indicates the date, timing, and venue of the personal hearing. On 21 June 2023, the Petitioner sought time to file a reply. The defence that the show cause notice was not uploaded on the petitioner’s designated portal is not convincing. There was undoubtedly some delay in responding to the show cause notice on the petitioner's part.

9. Be that as it may, the petitioner did file a response on 21 June 2023, seeking some time to file a detailed reply. Though the response was belated, the same was filed before the impugned order was made. The record shows that the impugned order was digitally signed on 25 June 2023. By that date, at least, the petitioner's response was before the 4th respondent. Besides, though the reason for the show cause notice not being uploaded on the petitioner's portal is not very convincing, given the fact that the impugned order was made or digitally signed only on 25 June 2023, the petitioner deserves to be granted an opportunity of hearing subject to the petitioner paying costs. This opportunity would address the argument about natural justice without prejudicing the revenue's interests disproportionately.

10. The reply dated 21 June 2023 does not appear to be on merits, but the reply refers to the show cause notice not being uploaded to the petitioner's designated portal. Accordingly, subject to the payment of costs of Rs.50,000/-, the petitioner is granted two weeks to file a reply to the show cause notice dated 10 April 2023.

11. After such a reply is filed, the 4th respondent should dispose of the show cause notice dated 10 April 2023 after considering the reply and hearing the petitioner. The show cause notice must be disposed of as expeditiously as possible and, in any event, within eight weeks of receiving the reply if the same is filed. All contentions of all parties are left open.

12. The relief granted to the petitioner is in the peculiar circumstances of this case and subject to the petitioner paying costs of Rs.50,000/-. Such costs must be paid within two weeks from today to the Prime Minister's Relief Fund, and the payment of such costs shall be a pre-condition for receiving the benefit of this order.

13. The rule in this petition is disposed of in the above terms.

14. All concerned to act on the authenticated copy of this order.

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