

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

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**WRIT PETITION NO.3714 OF 2024
WITH
INTERIM APPLICATION (L) NO.30995 OF 2024**

Pepperfry Private Limited	..	Petitioner/Applicant
<u>Versus</u>		
Union of India & Ors.	..	Respondents

Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani and Ms. Jasmine Dixit i/by UBR Legal for the petitioner/applicant.

Ms. Jyoti Chavan, Addl. G.P. for respondents in WP/3714 of 2024.

Mr. Manish Upadhye for respondent nos.2 & 4 in WP/2451 of 2024 (already disposed).

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

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

1. Heard learned counsel for the parties.
2. By an order dated 12 November 2024, we had disposed of this petition.
3. It is pointed out that the disposal of the petition was based on the orders made by us in Writ Petition No.4500 of 2024. However, it is now pointed out to us that though this petitioner instituted Writ Petition No.4500 of 2024, the subject matter of the said petition was different.
4. Thus, we are satisfied that there was an error apparent on the face of the record. Consequently, we recall our order dated 12 November 2024 and restore Writ Petition No.3714 of 2024 for Admission/Disposal.

5. We issue Rule and make the rule returnable immediately with the consent of the learned counsel for the parties.

6. The petitioner challenges Order-in-Original dated 29 April 2024 made by the Deputy Commissioner of State Tax (Respondent No.4).

7. Though in paragraph 7 of the petition, the petitioner claimed that it has no other efficacious remedy, the petitioner does have an alternate remedy of an appeal against the impugned order.

8. Mr. Raichandani, however, submitted that there was no compliance with principles of natural justice in this matter because after the petitioner submitted final reply dated 26 April 2024, the petitioner or petitioner's representative was not heard. He, therefore, submits that the impugned order be set aside without relegating the petitioner to the alternate remedy.

9. Ms Jyoti Chavan, learned Addl. G.P. has placed the Roznama of the proceedings before the 4th respondent. On perusing the same, we think that the issue of failure of natural justice or denial of opportunity of hearing is, at the highest, an arguable contention. However, prima facie, this does not appear to be a case of no notice/no hearing but, at the highest, a case of no adequate hearing. Besides, in this case, though Roznama reflects the signatures of the petitioner's representative, this Roznama was not enclosed with the Petition.

10. Mr. Raichandani's specious argument that a copy of the Roznama was not furnished to the petitioner cannot be accepted. Before grounds of failure of natural justice are raised, the petitioner must apply for and obtain the Roznama so that there is no variation between the averments in the petition and the contents of the Roznama. In this case, as noted earlier, the Roznama entries bear the signatures of the petitioner's representative.

11. In any event, we do not propose to conclude on the issue of failure of natural justice because, as we stated earlier, these are arguable matters. We have referred to these matters only to point out that this is not a fit case for departing from the practice of exhaustion of alternate remedies. All such contentions, whether on merits or the alleged ground of failure of natural justice, can always be raised before the Appellate Authority. In this case, even considering the grounds for the failure of natural justice would involve examining factual aspects that the Appellate Authority could best undertake.

12. Therefore, without entering the merits of the matter or even the merits of the ground based on the failure of natural justice, we decline to entertain this petition but relegate the petitioner to the alternate remedy of appeal if the petitioner so chooses to avail the same.

13. Mr. Raichandani, on instructions, states that the petitioner will file an appeal against the impugned order within four weeks from the date of uploading this order. Suppose the appeal is indeed instituted within four weeks of the uploading of this order. In that case, the Appellate Authority must entertain the same on merits, including considering the ground of failure of natural justice. The Appellate Authority need not go into the limitation issue because we find that this petition was instituted within the limitation period prescribed for filing an appeal.

14. All contentions of all parties are left open to be decided by the Appellate Authority at the first instance. Further, we clarify that the constitutional validity issue raised in this petition's prayer clause (b) is also explicitly kept open. If the petitioner's grievance survives, then, at the appropriate stage, it would be open to the petitioner to press this challenge since we have not examined this challenge in the present matter.

15. This petition is dismissed but by granting the petitioner liberty in the above terms. The rule is discharged. No costs.
16. All concerned to act on the authenticated copy of this order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)