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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-6062-CWP-2024 in/and
CWP-10221-2021 (O&M)
Date of Decision: 24.04.2024

GEMS EDUCATION SOLUTIONS INDIA PVT. LTD.
. . . . Petitioner

Vs.

UNION OF INDIA AND ANOTHER
. . . . Respondents

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

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Present: Mr. Yatin Sharma, Advocate
for the petitioner.

Mr. Varun Issar, Sr. Standing Counsel
for the respondents.

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SANJEEV PRAKASH SHARMA, J.(Oral)

CM-6062-CWP-2024

Application for placing on record reply on behalf of respondents is allowed.

Registry to place the same at appropriate place.

Main case

1. The case of the petitioner is that a proper hearing to defend the case was not provided to the petitioner. It is his case that the so-called show cause notice issued on 16.02.2021 was during the COVID-19 period and the petitioner himself was suffering from COVID-19, and the medical documents to that effect were also submitted.
2. In spite thereto, an order has been finally passed by the Assessing Officer raising a demand of Rs.2,54,77,610/- on 30.04.2021.

3. Learned counsel submits that the order deserves to be quashed as the principles of natural justice are required to be followed even under the Faceless Scheme.
4. Learned counsel relies on the judgment passed by this Court on 26.04.2023 in ***CWP-7239-2023 in Arihant Roller Flour Mills vs. National Faceless Assessment Centre and another***.
5. *Per contra*, learned counsel appearing for the Revenue has supported the assessment order. He submits that the show cause notice was issued but the petitioner failed to place the documents on record.
6. In rejoinder, learned counsel submits that all the documents are available with the petitioner and he is ready to produce them before the concerned officer.
7. We find that this Court in ***Arihant Roller Flour Mills*** (supra) passed the following order:

> *"Petitioner is seeking issuance of writ in the nature of certiorari for quashing order dated 24.03.2023 (P-6), notice of demand dated 24.03.2023 (P-7), notice dated 24.03.2023 (P-8), as the orders/notices had been passed in violation of principles of natural justice and in non-compliance of procedure enshrined in clause (vii) and (viii) of sub-section (6) to Section 144-B of the Act.*
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> *The grievance of the petitioner before this Court is that his case was fixed for 21.03.2023 at 11 AM through VC but due to non-availability of the petitioner's counsel, a request to re-schedule the VC was submitted by the counsel for the petitioner at 7 AM on 21.03.2023 but the petitioner did not receive any response from respondent No. 1 and the request showed as "Open" on the e-filing portal of the petitioner. Bu respondent No. 1 closed the e-submission facility in the account of the petitioner on 21.03.2023. The petitioner then raised a grievance on e-filing portal on 21.03.2023 and resolution to this grievance was provided on 23.03.2023. This information was even*

> *forwarded by respondent No. 1 to the concerned Assessment Unit on 24.03.2023 (P-5). However, without affordingopportunity of hearing to the petitioner, the impugned order and notices have been issued.*
>
> *In compliance of order dated 12.04.2023, a reply dated 20.04.2023 has been filed by the respondents admitting the fact that information with respect to request of personal hearing was forwarded by respondent No. 1 to the concerned assessment unit on 21.03.2023.*
>
> *Without going into the merits of the case, the present petition is allowed and impugned order dated 24.03.2023 (P-6), notice of demand dated 24.03.2023 (P-7) and notice dated 24.03.2023 (P-8) are set aside. The matter is being remanded back to the Assessing Officer to pass afresh order after giving opportunity of hearing to the petitioner, in accordance with law."*

8. In the present case, we are satisfied that on account of suffering from COVID-19, the petitioner has been prevented to place all the documents on record and the assessment order was passed without his defence being examined. It could be in the interest of justice and in compliance of the principles of natural justice that the petitioner be given a fair chance.
9. Accordingly, following the judgment (supra), without going into the merits of the case, we set aside the impugned assessment order dated 30.04.2021 and direct the Assessing Officer to provide a fresh opportunity to the petitioner.
10. Fresh notice shall be issued within a period of two weeks from today, and thereafter reply shall be filed by the petitioner within four weeks placing all the documents on record which he may want to place in support of his defence, whereafter the Assessing Officer shall examine the same and pass a fresh speaking order.

11. It is made clear that if no reply is filed within four weeks after issuing of the said notice, the order passed by the Assessing Officer dated 30.04.2021 shall revive and the Revenue shall be free to proceed further in terms of the order dated 30.04.2021.

12. Writ Petition stands allowed to the aforesaid extent.

13. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

April 24, 2024
Mohit goyal

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***