



\$~55

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 22.04.2024

+

W.P.(C) 3884/2024 & CM APPL. 15998/2024

M/S KCA INFRASTRUCTURE THROUGH ITS
PROPRIETOR SH SONU AHUJA

..... Petitioner

versus

LEARNED COMMISSIONER ADJUDICATION CENTRAL
TAX CGST DELHI EAST

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr. Gaurav Gupta, Advocate.

For the Respondent:

Mr. Arun Khatri, SSC with Ms. Shelly Dixit &
Mr. Sahil Khurana, Department of CGST.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 28.12.2023 whereby the Show Cause Notice dated 24.10.2018 and 14.02.2020 have been disposed of.
2. A short counter affidavit filed by the respondent vide diary No. 1148301/2024 on 15.04.2024 is not on record. However, the original duly attested has been produced in Court. Same is taken on record.



3. Learned counsel for the petitioner submits that no effective date providing an opportunity of personal hearing was granted to the Petitioner. He submits that no notice of hearing was received for personal hearing on 03.11.2020 and petitioner received a notice for hearing on 04.01.2021.

4. As per petitioner, on 04.01.2021, Petitioner along with his representative had appeared and made detailed submissions before the Proper Officer and thereafter sought time to file written submissions, which were subsequently filed. However, no order was received and Petitioner got to know that the concerned Officer had changed.

5. Thereafter, no notice of hearing was received. A notice was received on 07.11.2023 fixing a date for hearing on 07.11.2023 and on 22.11.2023. He submits that since no notice was received before 07.11.2023, no one could appear on behalf of the Petitioner for the said hearing and for 22.11.2023, a request was made for deferment because of the fact that the counsel was not available.

6. Thereafter, a notice dated 11.12.2023 was received fixing a date of hearing on 18.11.2023. He submits that on 18.12.2023, a communication was sent to the Respondent that the date appeared to be incorrect. However, no further communication has been received but the impugned order records that the hearing was held on 18.12.2023 which is contradicted by the letter dated 11.12.2023.



7. The counter affidavit confirms the submissions of the counsel for the petitioner with regard to the notices having been sent for the various dates. The counter affidavit further states that a sixth notice of personal hearing was issued on 11.12.2023 for a hearing on 18.12.2023, but on account of a clerical mistake a date 18.11.2023 was printed on the notice of hearing.

8. On a query raised to the learned counsel for the respondent as to whether there is any office noting on the file of the case fixing the date of 18.12.2023, learned counsel respondent submits that no such office noting has been brought to his notice by the department or provided to him. He submits that the copy of notice dated 11.12.2023 annexed herein as “Annexure F” is the only notice evidencing the fixing of the date of hearing as 18.12.2023.

9. Perusal of notice dated 11.12.2023 shows that the date of hearing mentioned therein is 18.11.2023. Said notice dated 11.12.2023 does not fix the hearing on 18.12.2023 and the same is conceded by the respondents who state that on account of a typographical error the date mentioned is 18.11.2023.

10. The impugned order dated 28.12.2023 records that a hearing was fixed on 18.12.2023 and since petitioner failed to appear, the case was decided ex-parte. Said finding is clearly contradicted from the record produced by the respondents themselves. There is no record of



the case hearing being fixed for 18.12.2023 and no hearing notice sent to the petitioner for the hearing of 18.12.2023.

11. Reliance has been placed by the learned counsel for the petitioner on the judgment in the case of *N.K. Prasada Vs. Government of India & Ors. 2004 (6) SCC 299* to contend that the principles of natural justice cannot be put in a straight jacket formula and in a given case the party would be required to show prejudice caused by non-compliance of the principles of natural justice.

12. Said reliance is misplaced for the reason that in the said case, the Supreme Court has held that once a party had proper notice and chose not to appear, then said party cannot be permitted to contend that he was not given a fair opportunity of hearing.

13. In the instant case, respondents decided to give petitioner an opportunity of hearing and accordingly, as per the respondents, fixed a date of 18.12.2023 for a personal appearance. Admittedly no notice for the said date was either sent or delivered to the petitioner. Consequently, petitioner was prejudiced, inasmuch as, petitioner could not be present at the time of personal hearing and the case was decided in his absence adversely. Consequently, we are of the view that the impugned order dated 28.12.2023 cannot be sustained and is liable to be set aside and the show cause notice restored on the file of the Adjudicating Authority.



14. In view of the above, the impugned order dated 28.12.2023 is set aside. The matter is remitted to the proper Officer to re-adjudicate the show cause notice in accordance with law. Petition is disposed of in the above terms.

15. With the consent of parties, it is directed that petitioner shall appear before the proper Officer on 30.04.2024 at 3.00 pm. It is clarified that this Court has neither considered nor commented on the merits of the contention of either party. All rights and contentions of the parties are reserved.

SANJEEV SACHDEVA, J

PURUSHAINDR KUMAR KAURAV, J

APRIL 22, 2024/sk