HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH

JUSTICE SHEEL NAGU
&
JUSTICE ANAND PATHAK

WRIT PETITION NO.13142/2021

M/s Sai Rubber Works
Versus
State of Madhya Pradesh & Ors.

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Shri S.K. Shrivastava, learned counsel for petitioner.
Shri MPS Raghuvanshi, learned Additional Advocate General for respondents/State.

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O R D E R
{Delivered on 20th day of October, 2021}

Per Anand Pathak, J.:

1. The instant petition is preferred by the petitioner seeking following reliefs:

> "*In prevailing facts and circumstances it is most humbly prayed before this Hon'ble Court that the present writ petition filed by the petitioner may kindly be allowed and further the impugned order dated 28-11-2020 (Annexure P/1) and order dated 2-07-2019 (Annexure P/2) may be quashed and set aside in the interest of justice.*"

2. Precisely stated facts of the case are that petitioner company is

engaged in the business of manufacturing of Waste Paring and Scrap or Rubber and Powder and granules obtained therefrom. Petitioner is duly registered with the GST Department at Maharashtra having GSTN -27AABHS5612R1ZM being manufacturer of rubber related goods. Petitioner is also involved in transportation of goods to various States. On various occasions, petitioner supplied goods to M/s Prakash Asphalting and Tolls Highway India Ltd. which is registered separately with GST at State of Madhya Pradesh and Uttar Pradesh having two separate GST Numbers for both the States.

3. In the case in hand, petitioner had to supply the goods to M/s Prakash Asphalting and Tolls Highway India Ltd. in State of Madhya Pradesh but inadvertently and erroneously generated the Tax Invoice in the name of unit registered at Uttar Pradesh. During transportation of goods, respondent No.3 detained the goods as well as vehicle of the transporter on the ground that place of supply mentioned in the E-way bill is different from the actual place of receiver and therefore, imposed penalty alleging suppression of sales and seized vehicle of the transporter vide order dated 02-07-2019 by the office of Joint Commissioner, Anti Evasion Bureau, Gwalior (Commercial Tax Department of Madhya Pradesh).

4. Being aggrieved by the order dated 02-07-2019, petitioner preferred appeal under Section 107 of M.P. Goods and Services

Tax, Act, 2017 (hereinafter referred to as "the SGST Act") on 16-12-2019 before appellate authority on different grounds as referred in the appeal. Appeal was barred by time because period of limitation to file first appeal according to Section 107 of the SGST Act is three months and the period for which the delay may be condoned is 30 days from the expiry of normal period of limitation. Thus, appeal was dismissed on delay as well as on merits. Therefore, this petition has been preferred.

5. It is the submission of learned counsel for the petitioner that Section 68 of the SGST Act read with 138A of the of the Central Goods and Services Tax (CGST), Rules, 2017 require the person in charge of a conveyance carrying any consignment of goods of value exceeding Rs.50,000/- to carry a copy of documents viz. Invoice/Bill of Supply/Delivery Challan/Bill of Entry and Valid E-way Bill in physical or electronic form for verification. Since he was carrying all documents, therefore, provisions of Section 129 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") are not invocable and therefore, proceedings initiated under Section 129 of the CGST Act by the respondents was illegal.

6. Learned counsel for the petitioner relied upon Section 126 (1) of the CGST Act to submit that no penalty for minor breaches of tax regulations or procedural requirements or any omission or mistake in documentation can be imposed and since mistake

was made without fraudulent intent or gross negligence, therefore, authority did not consider the case in correct perspective and caused illegality.

7. Learned counsel for the petitioner fairly submits that error which petitioner done at the time of generation of e-way bill was procedural mistake but it was done without fraudulent intent or gross negligence. He referred circular Dated 14-09-2018 passed by the Central Board of Indirect Taxes and Custom.

8. It is the submission of learned counsel for the petitioner that the appellate authority did not provide any opportunity of personal hearing to the petitioner and pass the impugned order in violation of principle of natural justice.

9. *Per contra*, learned Additional Advocate General for the respondents/State opposed the submissions while filing reply that in e-way bill the place was mentioned as Jhansi (U.P.). whereas consignment was stopped at Morena (M.P.). Even if in e-way bill there is clerical error in filling up of form, petitioner is liable for penalty as per Section 129 of the CGST Act. There is no distinction carved out regarding clerical mistake or a mistake committed inadvertently in filling up of form. Therefore, petitioner cannot wriggle out from the liability. In e-way bill place of destination was mentioned as Jhansi whereas the goods were seized at Morena and therefore this

error of petitioner clearly invokes Section 129 of the CGST Act which deserves no interference. Intention of petitioner can only be gathered through its conduct only. Since Section 129 of the CGST Act does not contemplate distinction between inadvertent and advertent error, therefore, authorities were right in invoking Section 129 of the CGST Act against the petitioner.

10. It is further submitted that during enquiry, driver of the vehicle made the statement that delivery of goods is to be made at Morena (M.P.) and not at Jhansi (U.P.) whereas the documents were for transportation of goods from Maharashtra to Uttar Pradesh. Sufficient opportunity was given to the petitioner before the Joint Commissioner before passing the impugned order dated 02-07-2019.

11. After passing of impugned order dated 02-07-2019, petitioner had to file the appeal within stipulated period as provided in Section 107 of the SGST Act but it did not file the same within the stipulated period and therefore, case was duly considered on the basis of written submissions made by him and vide e-mail dated 24-09-2020 (1:20 pm) (Annexure P/8) petitioner requested the authority to consider those written submissions as well as grounds mentioned in earlier mail dated 26-10-2020 as part and parcel of written submissions. Thereafter, appellate authority passed the order dated 28-11-2020 under due intimation to the petitioner. Therefore, no illegality has been

caused and petitioner is trying to get orders set aside on flimsy technical pretext. He prayed for dismissal of writ petition.

12. Heard learned counsel for the parties and perused the documents appended thereto.

13. In the case in hand, petitioner has challenged the order dated 02-07-2019 (Annexure P/2) passed by the State Tax Officer, Anti Evasion Bureau as well as order dated 28-11-2020 (Annexure P/1) passed by appellate authority (SGST Act).

14. Section 107 of the SGST Act provides for appeal to the appellate authority. As per sub-section (1) of Section 107 of the SGST Act, appeal can be filed within three months from the date on which said decision or order is communicated to such person. Sub-section (4) provides subjective satisfaction of appellate authority that it can entertain appeal if same has been filed within further period of one month provided sufficient cause for delay in presenting appeal has been shown by the appellant. Meaning thereby, in any condition appeal has to be preferred within four months as outer limit.

15. Here, in the present case, impugned order dated 02-07-2021 was duly communicated to the petitioner on the same day. Therefore, petitioner had to file the appeal within four months as outer limit (from the date i.e. 02-07-2019) on or before 30-10-2019 whereas appeal was preferred on 16-12-2019. Although petitioner has taken the ground that petitioner

received order dated 02-07-2019 on 30-07-2019 and if period is counted from 30-07-2019 also, even then outer limit of four months expires on 30-11-2019. Appellate authority as recorded this fact and given opinion that appellate authority has no power to condone the delay after expiry of four months as stipulated in Section 107(1) and 107(4) of the SGST Act. Therefore, appeal was dismissed on account of delay.

16. So far as ground raised by the petitioner regarding non affording of opportunity of hearing is concerned although Section 107(4) and (8) of the SGST Act provides provision for opportunity of hearing to the appellant and if it is seen in juxtaposition, then it appears that opportunity of hearing is required to be given to an appellant who files appeal. In the present context, notice of hearing dated 17-02-2020 (Annexure P/5) and different e-mails dated 18-05-2020, 26-10-2020 and 24-11-2020 indicate that petitioner had filed the written submissions in the pending appeal for perusal of authority and for record purpose before the appellate authority. Petitioner did not press for hearing, rather pressed for consideration of written submissions and tried to press for hearing on 28.11.2020, when final order was passed. Understandably, petitioner wanted early decision so that issue of release of attached vehicle be resolved.

17. E-mail dated 26-10-2020 (Annexure P/7) and e-mail dated 24-11-2020 are reproduced for ready reference:

"***E-mail dated 26-10-2020.***

This is in regard to the above captioned matter, wherein I have filed an appeal before your good-self against the order dated 02.07.2019 passed by Shri R S Rajpoot, State Tax Officer.

The said appeal is pending since 16.12.2019 for final adjudication.

On 17.02.2020, the undersign has received a notice for hearing wherein next date of hearing is mentioned as 23.03.2020.

It is also relevant to mention herein that via said Notice of hearing the undersign was also instructed to explain the delay caused in filing of appeal along with additional submission, if any.

In compliance of the said instructions, the undersign through the Chartered Accountant of the Firm has filed additional submission inter-alia it was also explained that the delay which was caused was due to the fact that the Firm is situated in the State of Maharashtra and therefore, has to apply for Temporary GSTIN number for State of Madhya Pradesh and only upon receiving the same from the department, the pending appeal has been filed before your good self on 16.12.2019. Therefore, there is no deliberate and intentional delay on the part of the undersign/firm and thus liable to be condoned in the interest of justice.

That due to declaration of lockdown by the Central Government/State Government since 22.03.2020 the appeal was not heard on 23.03.2020 and till date is awaiting for the next

date of hearing.

Therefore, it is most humbly requested you to kindly provide the next date of hearing in the captioned matter at the earliest.

E-mail dated 24-11-2020.

Kindly find attached the written submissions in the pending appeal for your kind perusal and record.

The grounds of delay is mentioned in my earlier/trailing mail dated 26.10.2020. kindly consider them as part and parcel of the present written submissions."

18. From perusal of above e-mails, it appears that petitioner duly represented its cause before the appellate authority through e-mails and through written submissions. It is worth noting fact that initially appellate authority issued notice of personal hearing and date was fixed as on 23-03-2020 in the Office of appellate authority but on that day lockdown started due to COVID -19 pandemic and therefore, personal hearing in Judicial as well as Quasi-judicial circles stopped and in its place virtual hearing, written submissions or submissions through e-mails were innovated or at least preferred. Since department might not have innovated concept of virtual hearing like in Courts, therefore, confined the scope of hearing through written submissions and e-mails. Therefore, from the record, it appears that pre-decisional hearing was afforded to the petitioner and petitioner filed written submissions also in the pending appeal for perusal and for record purpose. Therefore, it cannot be said

that petitioner does not get any opportunity of hearing.

19. Appeal got dismissed on the point of limitation as preliminary ground for rejection of appeal and admittedly, petitioner filed appeal belatedly. Therefore, for personal hearing appellate authority could not have waited for normalcy to resume. On the basis of written submissions and record available, appellate authority passed the impugned order dated 28-11-2020 which is otherwise also stands to judicial scrutiny.

20. In relation to scope of personal hearing, the Apex Court in the case of **Carborundum Universal Ltd. Vs. Central Board of Direct Taxes, New Delhi, 1989 Supp (2) SCC 462** held that personal hearing in every situation is not necessary and there can be compliance with the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof. Later on, in the case of **Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central -I and Ors., (2008) 14 SCC 151**, Apex Court considered various judgments passed in respect of rules of natural justice and held that principle of natural justice implies duty to act fairly i.e. fair play in action. According to Apex Court, aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. Guidelines given by the Apex Court is worth reproduction for ready reference:

> "*We may, however, hasten to add that no general rule of universal application can be laid down as to the applicability of the principle audi alteram partem, in addition to the language of the provision. Undoubtedly, there can be exceptions to the said doctrine. Therefore, we refrain from giving an exhaustive catalogue of the cases where the said principle should be applied. The question whether the principle has to be applied or not is to be considered bearing in mind the express language and the basic scheme of the provision conferring the power; the nature of the power conferred and the purpose for which the power is conferred and the final effect of the exercise of that power. It is only upon a consideration of all these matters that the question of application of the said principle can be properly determined."*

21. In the case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati and others, (2015) 8 SCC 519**, Supreme Court of India has considered this aspect with updated outlook and gave guidance as under:

> **38.** *But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the Courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straight-jacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid*

principles have been invoked under certain circumstances. For example, the Courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the Courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on.

39. *We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading*

to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation, who said that

> *a 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain'.*

Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority that

> *'.....no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since the 'right' result can be secured without according such treatment to the individual.*

40. *In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities*

to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing."

22. In the case of **Sahara India (Firm) Lucknow (supra)** and **Carborundum Universal Ltd. (supra),** the Apex Court considered the provisions of Income Tax Act, 1961 and in the case of **Dharampal Satyapal Limited (supra),** Apex Court has considered the factual contours *vis-a-vis* Central Excise Act, 1944, Additional Duties of Excise (Goods of Special Importance) Act, 1957 and the Finance Act, 2003. GST is also fiscal statute and therefore, strict compliance is expected from all authorities concerned. Therefore, period of limitation shall also be considered accordingly.

23. When right to represent the case was given in peculiar fact situation of COVID-19 pandemic by way of e-mails/written submissions, then sufficient/necessary compliance is being made regarding opportunity of hearing. Even otherwise on merits also appellate authority delved upon and thereafter ensure passing of order. Petitioner in the present case through

pleadings and submissions raised the point on merits also but since all those points have been duly considered by the authorities below and thereafter reached to the conclusion about the tax evasion, then scope of interference restricts under the discretionary jurisdiction under Article 226/227 of Constitution of India. No illegality or perversity has been pointed out by the petitioner to the extent where this Court would have invoked the jurisdiction.

24. Petition sans merits and is hereby **dismissed**. Authorities below be informed accordingly.

(Sheel Nagu)
Judge

(Anand Pathak)
Judge

Anil*

ANIL KUMAR CHAURASIYA

Digitally signed by ANIL KUMAR CHAURASIYA
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