IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14852 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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M/S. DAKSH ENTERPRISE
Versus
COMMISSIONER OF STATE TAX

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Appearance:
MR.AVINASH PODDAR(9761) for the Petitioner(s) No. 1
MS. SHRUNJAL SHAH, ASSISTANT GOVERNMENT PLEADER for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 19/10/2023
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1 Rule returnable forthwith. Ms.Shrunjal Shah, learned AGP, waives service of notice of rule on behalf of the respondent – State. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2 The petition is taken up for hearing only as, the issue involved is whether an opportunity of hearing was given to the petitioner before passing an order in Form GST DRC-7.

3 Heard Mr.Avinash Poddar, learned counsel for the petitioner and Ms.Shrunjal Shah, learned Assistant Government Pleader for the respondent – State.

4 Facts in brief indicate that the petitioner is a partnership firm having its registered office and principal place of business at Ghantia Prachi, Taluka: Sutrapada, Gir Somnath. A notice under Sec.61 of the CGST / GGST was issued to the petitioner on 05.07.2021. Subsequently, it is the case of the petitioner that on 07.02.2022, a show

cause notice / intimation in Form GST DRC – 01 was issued on 07.02.2022, wherein, a demand has been raised against the petitioner for the financial year 2019-2020.

4.1 Perusal of the show cause notice would indicate that the petitioner was asked to submit his reply on, or before, 20.02.2022. It is the case of the petitioner that pursuant to the show cause notice, the petitioner responded in detail by filing a reply on 19.02.2022. Further, considering the reply so filed, by the impugned order dated 06.06.2022, the petitioner has been saddled with the liability to pay the amounts so stated in the order in Form GST DRC 07.

4.2 As pointed out by the learned counsel for the petitioner, perusal of the decision impugned dated 06.06.2022, indicates that the authorities have proceeded on an assumption that pursuant to the show cause notice, a response had to be filed on, or before 14.02.2022, which the petitioner did not so file, and therefore, the order was passed.

5 Evident it is from the show cause notice dated 05.02.2022 that a response was to be filed by the petitioner latest by 20.02.2022, which the petitioner in fact had filed a day prior thereto on 19.02.2022. The impugned order does not reflect consideration of the reply so filed and only on this ground, as there is a violation of principles of natural justice and non consideration of the reply so filed, the order dated 06.06.2022 is hereby quashed and set aside.

It is clarified that this Court has not gone into the merits of the issue and the authorities are free to pass a fresh order after consideration of the response filed by the petitioner on 19.02.2022 and after giving personal hearing to the petitioner from the stage of DRC-01. The petition is partly allowed, accordingly. Rule is made absolute to the aforesaid extent.

(BIREN VAISHNAV, J)

(MAUNA M. BHATT,J)

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