

Neutral Citation No. - 2024:AHC:90282-DB

Court No. - 39

Case :- WRIT TAX No. - 570 of 2024

Petitioner :- M/S Avshesh Kumar

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Niraj Kumar Singh,Utkarsh Malviya

Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Gopal Verma

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Shri Utkarsh Malviya, learned counsel for the petitioner, Shri Gaurav Mahajan, learned counsel for the revenue and Shri Gopal Verma, learned counsel for the Union of India.

2. Challenge has been raised to the adjudication order dated 23.3.2023 passed by the Assistant Commissioner, Central Goods and Services Tax & Central Excise Division-Farrukhabad, whereby demand of tax Rs. 15,64,083/-, and equal amount of two penalty (under Section 78 of the Finance Act, 1994 read with Section 174 of CGST Act, 2017) and further five penalties of Rs. 10,000/- each and further penalty of Rs. 20,000/-, have been imposed.

3. According to the petitioner, the said order was served on him in March, 2024. On the other hand, learned counsel for the revenue has relied on written instructions received by him that indicate that the notice in the adjudication proceedings were dispatched to the petitioner through e-mail as also through speed post at the permanent address that became known to the revenue authorities. In that regard, it may be noted, the petitioner was not registered

under the Central Excise Act or the Finance Act, 1994 for the purpose of service tax. In paragraph-24 of the impugned order, it has been observed as below :

"24. The Noticee was given opportunities of personal hearing through virtual mode on 13.02.2023, 17.02.2023 or 20.02.2023 before the undersigned but they did not attend the hearing on the said dates nor they sought for any adjournment in this regard.

It is worthwhile to note here that the letter meant for personal hearing were sent to the Noticee through Speed post/ e-mail. The Noticee neither responded in any manner nor attended the personal hearing on the scheduled date and time."

4. Relying on Section 33A of the Central Excise Act, 1994 (hereinafter referred to as the 'Act'), it has been submitted, it never became open to the respondent-authority to fix three successive dates of hearing, by a single notice, that too within a span of seven days, solely with the object of defeating the purpose and intent of Section 33A of the Act. In any case no order was passed on any of the three dates either granting or refusing adjournment. Without fixing any other date in the proceeding and without issuing any further notice in that regard, the impugned order was passed on 23.03.2023. Thus, the rules of natural justice are described to have been completely violated. Reliance has been placed on a division bench decision of the Gujarat High Court in **Regent Overseas P. Ltd. and another v. Union of India and another; 2017 SCC OnLine Guj 2552.**

5. On the other hand, learned counsel for the revenue would contend that the petitioner failed to appear before the adjudicating authority despite notice dated 27.01.2023 served on him through e-mail. Written instructions produced today do indicate that such notice was dispatched through e-mail. Yet, the petitioner continues to deny receipt of such notice. Though the status of the dispatch of

the notice through e-mail is established, as above, it is also claimed by the revenue authorities that such notice was dispatched to the petitioner by speed post. That was received. The petitioner denies that receipt on the assertion that the petitioner had never obtained registration at the address at which the respondent may have dispatched notice through speed post and in any case that notice was not received by the petitioner but by "Anju Dubey", a distant relative of the petitioner. Thus, the petitioner was never informed about the proceeding.

6. Having heard learned counsel for the parties and having perused the record, Section 33A of the Act reads as below :

"[33A. Adjudication procedure.—(1) The adjudicating authority shall, in any proceeding under this chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]"

7. Undoubtedly, that section seeks to limit the adjournment that may be granted to a noticeee facing adjudication proceedings, to three dates. Thus, the mandate of the Act exists to conclude the adjudication proceedings expeditiously.

8. In **Regent Overseas P. Ltd. (supra)**, Gujarat High Court has observed as below :

"11. Thus, by virtue of the provisions of sub-section (2) of section 33A of the Act, when a personal hearing is fixed, it is open to a party to seek time by showing sufficient cause and in such a case, the adjudicating authority may grant time and adjourn the hearing by recording the reasons in writing. However, in view of the proviso thereto not more than three such adjournments can be granted. On a plain reading of sub-section (2) of section 33A of the Act and the proviso thereto, what the same envisages is fixing a date of hearing and in case if a party asks for time and makes out sufficient

cause, then to adjourn the hearing. Since the number of such adjournments is limited to three, the hearing would be required to be fixed on each such occasion, and on every occasion when time is sought and sufficient cause is made out, the case would be adjourned to another day. However, the adjudicating authority is required to give one date at a time and record his reasons for granting adjournment on each occasion. It is not permissible for the adjudicating authority to issue one consolidated notice fixing three dates of hearing, whether or not the party asks for time, as has been done in the present case. Thus, apart from the fact that the notice of hearing has not been served in the manner contemplated under section 37C of the Act, the notice itself suffers from a legal infirmity inasmuch as it fixes three dates of hearing at a time, which is not in consonance with the proviso to section 33A of the Act.

12. Another aspect of the matter is that by the notice for personal hearing three dates have been fixed and absence of the petitioners on those three dates appears to have been considered as grant of three adjournments as contemplated under the proviso to sub-section (2) of section 33A of the Act. In this regard it may be noted that sub-section (2) of section 33A of the Act provides for grant of not more than three adjournments, which would envisage four dates of personal hearing and not three dates, as mentioned in the notice for personal hearing. Therefore, even if by virtue of the dates stated in the notice for personal hearing it were assumed that adjournments were granted, it would amount to grant of two adjournments and not three adjournments, as grant of three adjournments would mean, in all four dates of personal hearing.

13. As discussed hereinabove, in view of the fact that the notice for personal hearing was not served upon the petitioners in accordance with law, no one could remain present for personal hearing on behalf of the petitioners on the dates specified in the notice and the adjudicating authority has proceeded on the footing that three adjournments have been granted and has passed the impugned ex parte order. Such order is, therefore, clearly in breach of the principles of natural justice warranting interference by this court in exercise of powers under article 226 of the Constitution of India."

9. We find ourselves in agreement with the view taken by the Gujarat High Court. Once the legislature contemplates the limits the total adjournments to three dates, it does not contemplate denial of opportunity of hearing. Rather, it seeks to regulate and thereby restrict the number of total adjournments with the apparent intent to allow the adjudication proceedings to conclude in a time bound manner. In the course of adjudication proceedings, number of dates may be fixed. There is no prescription of law to restrict the total number of dates fixed in an adjudication proceeding, to any number. Also, there is no other prescription of time other than the

general limitation of five years. Therefore, it is possible that in the course of adjudication proceedings, adjournment may or may not be sought at any particular date fixed. That event would remain case/circumstance specific.

10. Fixing three successive dates within a period of one week was not a desirable course to be adopted as it does indicate a pre-conceived notion with the adjudicating authority qua the opportunity of adjournment that may be allowed. In any case the adjudicating authority had to pass specific orders to grant adjournment on each date fixed in the proceeding, if such adjournment was sought. It is at that stage that another date may have been fixed. Here, it is not the case of the revenue that the assessing authority fixed the three dates either upon adjournment sought or the preceding date or interspaced in time as may have allowed the petitioner a reasonable opportunity to be acquainted with the fact of the adjournment granted on the earlier date. In any case the adjudicating authority did not communicate to the petitioner the order allowing the adjournment sought/deemed to have been sought and allowed on any particular date.

11. What is more glaring is, the adjudicating authority did not pass any order on the third date i.e. 22.02.2023. At the same time, he fixed the proceeding for another date i.e. 23.03.2023. For that date, no notice is shown to have been issued to the petitioner inasmuch as 23.03.2023 would be the fourth date in the adjudication proceedings. The petitioner had a right to be informed of the same.

12. In view of the above, no useful purpose may be served in relegating the petitioner to the forum of the alternative remedy as his right of hearing has been seriously impaired. At the same time,

in face of original show cause notice dated 19.10.2021 having been served on the petitioner and there being no denial as to that, the petitioner must be put to terms for the relief being claimed by him.

13. Accordingly, subject to the petitioner depositing a sum of Rs. 5,00,000/- within a period of one month from today, the adjudication order dated 23.03.2023 shall stand set aside. Further, the petitioner may treat the adjudication order dated 23.03.2023 to be the part of show cause notice. He may submit his reply thereto within the same time. Subject to such compliance, the adjudicating authority may fix a short date for hearing with fifteen days notice to the petitioner at his address as disclosed in the writ petition and the e-mail at which earlier communications may have been sent. The petitioner undertakes to appear in the proceeding on the date fixed such that the same may be concluded as expeditiously as possible preferably within a period of three months from today.

14. With the aforesaid observations/directions, the writ petition stands **disposed of**.

Order Date :- 20.5.2024
SA

(Donadi Ramesh, J.) (S.D. Singh, J.)