

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3460 OF 2021

Wallem Shipmanagement (India) Pvt. Ltd..... Petitioner

Versus

The Union of India & Ors.....Respondents

Mr. Bharat Raichandani a/w. Mr. Prathamesh Gargale i/by M/s.
UBR Legal for the Petitioner.

Ms. Jyoti Chavan, AGP for Respondent Nos.2 and 3.

Ms. Maya Nagarkar, Asst. Commissioner, Present.

**CORAM : G. S. KULKARNI,
JITENDRA JAIN, J.J.**

DATED : 11th JULY, 2023.

P.C.

1. By this petition under Article 226 of the Constitution of India, the Petitioner has prayed for the following reliefs:-

“(a) For the writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order calling for the papers and proceedings of the Rejection Order No.D2710200270354 dated 20.10.2020 passed by the Assistant Commissioner of State tax and after examining legality, validity & propriety thereof the said order be quashed & set aside;

(b) For a writ of mandamus or any other writ order or direction ordering the Respondents not to give effect to the Impugned Order or act upon or in pursuance of the same.”

2. Brief facts are as under:-

- (i) The Petitioner is engaged in the business of 'placement and supply service of personnel' to its customers. On 30th March 2020, the Petitioner made an application for refund of IGST, CGST, SGST for period April 2018 to March 2019, aggregating to Rs.69,96,170/- in Form-GST-RFD-01.
- (ii) On 30th September 2020, Respondent No.2 issued a show cause notice in Form RFD-08 pointing out defects/deficiency in the refund application of the Petitioner and to show cause why the refund should not be rejected. The said notice was made returnable on 15th October 2020.
- (iii) On 14th October 2020, vide letter dated 15th October 2020, the Petitioner requested Respondent No.2 for extension of time to file reply to the show cause notice which was scheduled for hearing on 15th October 2020. The reasons given in the said letter for extension of time was on account of pandemic and the refund period being old, Petitioner was in the process of filing a reply which would take sometime. Respondent No.2 granted extension of only three days as against the request of the Petitioner for two weeks.
- (iv) On 15th October 2020, the Petitioner addressed a letter to Respondent No.2 objecting to giving extension of only three

days and requested for at least two weeks for making submission and to attend personal hearing. The Petitioner reiterated its reasons for the same on account of pandemic.

(v) On 20th October 2020, Respondent No.2 rejected the refund application of the Petitioner on the ground that the Petitioner has not replied to show cause notice. Being aggrieved by the said rejection order, the Petitioner has approached this Court.

3. We have heard learned counsel for the Petitioner and learned counsel for the Respondents.

4. The Petitioner has contended that Respondent No.2 was not justified in rejecting the Petitioner's refund application without giving adequate opportunity of a hearing. Moreso, since on account of pandemic, there was a disruption in working of the Petitioner's office. The Petitioner also contended that second request for extension of time vide letter dated 15th October 2020, having not been rejected, Respondent No.2 was not justified in rejecting the refund application that too without hearing the Petitioner. The Petitioner, therefore, contended that on account of breach of natural justice, the impugned order rejecting the refund application be set aside and the matter may be restored to the file of Respondent No.2 for fresh adjudication.

5. On behalf of Respondent No.2, it is submitted that adequate opportunity of hearing was given to the Petitioner vide show cause notice dated 30th September 2020 and furthermore, an extension of three days was given on an application made by the Petitioner, so as to enable the Petitioner to reply to the show cause notice. It is, therefore, contended that as an adequate opportunity of a hearing was given to the Petitioner, the grievance of the Petitioner is unsustainable.

6. In our view, in the facts and circumstances of the case, Respondent No.2 was not justified in passing an order rejecting the refund on the ground that the Petitioner has not replied to the show cause notice. The Petitioner on 14th October 2020, requested for two weeks time so as to enable it to prepare a comprehensive reply to the show cause notice. It is known fact that from 23rd March 2020 onwards, there was a total disruption of the normal human activities as also of every economic activity world over, on account of the pandemic. The whole world had virtually come to a stand still. It is, however, surprising that the show cause notice was issued during the pandemic that is on 30th September 2020, certainly it could not be expected that the Petitioner could immediately reply to the same. Thus in our opinion, the reason as furnished for extension of time to file a reply to the show cause notice by the Petitioner on account of pandemic was a sufficient

reason. The Respondent No.2, in these circumstances, ought to have given a reasonable time for the Petitioner to file its reply, however, Respondent No.2 gave only three days to file the reply, which cannot be termed on the facts of the present case any reasonable time or an adequate opportunity of a hearing. Moreover, the Petitioner once again on 15th October 2020, objected to Respondents giving only three days time and reiterated its request for atleast two weeks on account of disruption due to pandemic. This application of the Petitioner has not been rejected by Respondent No.2 and, therefore, Respondent No.2 cannot be said to have given adequate opportunity of hearing to the Petitioner to reply to the show cause notice.

7. Therefore, in our view, certainly a prejudice has been suffered by the Petitioner by the impugned order dated 20th October 2020 rejecting the application of the Petitioner for refund of Rs.69,96,170/-. For such reasons, the impugned order is required to be set aside on account of violation of principle of natural justice. We, therefore, order as under:-

- (a) Order dated 20th October 2020 rejecting the refund application of the Petitioner is set aside;
- (b) Respondent No.2 shall issue a fresh show cause notice to the Petitioner within a period of two weeks

from today;

(c) The Petitioner to file its reply to the show cause notice within a period of two weeks from the date of intimation of the show cause notice referred to in (b) above;

(d) Respondent No.2 to consider the reply of the Petitioner and pass a fresh speaking order within a period of four weeks from the date of filing the reply;

(e) Needless to say that Respondent No.2 will give an opportunity of personal hearing before passing the order;

(f) All contentions of the parties are expressly kept open.

8. Petition is disposed of in the above terms. No costs.

[JITENDRA JAIN, J.]

[G. S. KULKARNI, J.]