



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

WRIT PETITION (L) NO.33343 OF 2023

Hydro Pneumatic Accessories India Pvt. Ltd.

..Petitioner

Vs.

The Assistant Commissioner of State Tax, Muland  
West & Anr.

..Respondents

Mr. Dharan V. Gandhi for the Petitioner.

Mr. Himanshu Takke, AGP for Respondent No. 1 (State).

CORAM : G. S. KULKARNI &  
JITENDRA JAIN, JJ.

DATE : 11 DECEMBER, 2023.

P.C.:

1. By this Petition under Article 226 of the Constitution of India, the petitioner has prayed for following substantial relief :

*(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the show cause notice issued under section 73(1) of the Act dated 03.04.2023 (Exhibit E) and order passed under section 73 of the Act dated 26.07.2023 (Exhibit H).*

2. The petitioner is engaged in the business of manufacturing of hydro pneumatic valve, instrumentation and fitting. The petitioner is registered under the Central Goods and Services Act, 2017 (CGST) and is regularly filing its returns. On 11<sup>th</sup> November 2022, respondent No.1 uploaded a notice in Form GST ASMT-10 informing discrepancies in the

return filed by the petitioner. The petitioner came to know about this notice when an intimation via email regarding show cause notice in Form DRC-01 was received on 3<sup>rd</sup> April, 2023. On 6<sup>th</sup> March 2023, notice in Form GSTDRC-01A was issued by respondent No.1 and on 3<sup>rd</sup> April 2023, an email was received by the petitioner regarding the issue of the said notice. The petitioner requested for the details to be furnished which are referred to in the show cause notice. On 12<sup>th</sup> April 2023, details of parameters 72 were furnished to the petitioner by the respondent. However, details in regard to parameters No.70 and 73 were not furnished, and therefore, the petitioner requested for the same. On 28<sup>th</sup> April 2023, the petitioner filed its reply by email giving its submissions as to why there are no discrepancies in the returns filed. In the said reply, the petitioner once again requested for detailed breakup of the parameters 70 and 73 to be furnished which were relied upon in the show cause notice. However on 26<sup>th</sup> July 2023, respondent passed an order under Section 73 raising a demand of Rs.70,16,508/- for the period April-2019 to March-2020. It is on this backdrop that the present proceedings are before us.

**3.** The petitioner submits that the impugned order is passed without giving any personal hearing although mandated by Section 75(4) of the CGST Act. The petitioner further submitted that the parameters

70 and 73 on the basis of which the impugned order is passed has not been furnished although same was requested by the petitioner vide various letters. The petitioner further submitted that the impugned order on one hand states that no reply was filed and on the other hand, states that documents are not sufficient which is self contradictory. The petitioner further submitted that no reasons are given in the impugned order. The petitioner, therefore, submitted that the impugned order is contrary to the mandate of law and principles of natural justice, and therefore, requires to be set aside.

4. Per contra, the respondents submits that the parameters are available on the portal and the petitioner can access the same, and therefore, there is no need for giving the same along with show cause notice. The respondents further stated that the present order is appealable, and therefore, this Court ought not to exercise jurisdiction in the writ proceedings and the petitioner be relegated to an alternate remedy. The respondents thus pray that the petition be dismissed and the petitioner be relegated to alternate remedy.

5. We have heard learned counsel for the petitioner and the respondent and with their assistance have perused the records of the petition.

6. In our view, there has been a violation of principles of natural justice in passing the impugned order for more than one reason; firstly, under Section 75 sub-section (4), it is mandatory for the respondents to give a personal hearing to the petitioner if an adverse order is contemplated to be passed against the assessee. In the facts of the present case, a personal hearing was not given to the petitioner, inspite of an adverse order having been passed. Secondly, the petitioner vide various emails requested for details of parameters No.70 and 73 be furnished. However, details of such parameters were not furnished to the petitioner. There is no explanation by the respondents as to why details of parameter No.72 were furnished and not the parameters of 70 and 73, except to state that everything is available on the portal. If it was available on the portal, then there was no reason why parameter 72 details were furnished and parameters 70 and 73 is not furnished. Thirdly, the impugned order on one hand states that no reply is submitted, whereas on the other hand states that the documents were not sufficient which itself is self-contradictory. Fourthly, the impugned order does not give any reasons of the alleged discrepancies so as to enable the petitioner to file its submission.

7. In the aforesaid circumstances, in our opinion, the impugned order would certainly be required to be held to be in breach of principles

of natural justice so as to enable this Court to exercise jurisdiction under Article 226 of the Constitution of India although, an alternate remedy is available.

8. In the light of the above discussion, we pass the following order:-

**ORDER**

- (i) The order under Section 73 dated 26<sup>th</sup> July 2023 is quashed and set aside;
- (ii) The respondent No.3 is directed to furnish detailed parameter Nos.70 and 73 within a period of one week from today;
- (iii) The petitioner to submit its reply / submission on the basis of such additional material within a period of one week from the receipt of the material as set-out above;
- (iv) The respondent No.1 shall set-out a suitable date for hearing after a period of two weeks from today;
- (v) On the petitioner being heard, after the petitioner is granted personal hearing, the respondent No.1 would pass an appropriate order in accordance with law.
- (vi) All contentions of the parties are expressly kept open.
- (vii) Writ Petition is disposed of. No order as to costs.

(JITENDRA JAIN, J.)

(G. S. KULKARNI, J.)