

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7568 of 2022**

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M/S. KAPTON ALLOYS PRIVATE LIMITED THROUGH ITS DIRECTOR
BHARATBHAI J. PATEL

Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR VARIS V ISANI(3858) for the Petitioner(s) No. 1

MR RAJ TANNA, AGP for the Respondent(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA
and
HONOURABLE MR. JUSTICE D.N. RAY

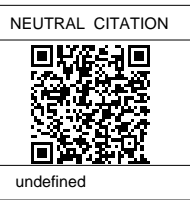
Date : 13/12/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr. Varis Isani for the petitioner and learned Assistant Government Pleader Mr. Raj Tanna for the respondent.

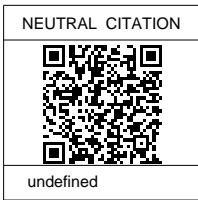
2. By this petition under Articles 226 & 227 of the Constitution of India, the petitioner has prayed to quash and set aside the impugned order dated 29.12.2021 passed by the respondent – Adjudicating Authority on the ground of violation of principles of natural justice as no oral hearing in the matter



was afforded to the petitioner.

3. The brief facts of the case are that the petitioner was doing trading business of all kinds of Iron and Scrap material. Summons under Section 70 of the Central / State Gujarat Goods and Service Tax Act, 2017 (for short 'the CGST Act'), was issued on 18.06.2020. The petitioner filed reply in response to the summons on 24.06.2020. The petitioner filed further reply on 14.07.2020 providing the details and second reply on 08.08.2020. Thereafter, a show cause notice under Section 74 of the CGST Act was issued on 21.10.2020. The petitioner filed a detailed reply on 22.11.2021 in compliance of the show cause notice along with the documents and evidence. On 27.12.2021 orders of provisional attachment was passed under Section 83 of the CGST Act and thereafter the impugned order dated 29.12.2021 was passed in Form GST DRC-07.

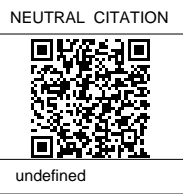
4. Learned advocate Mr. Varis Ishani for the petitioner submitted that inspite of praying for the opportunity of personal hearing, the same was not provided by the respondent – Adjudicating Authority and impugned order was passed without



taking into the consideration the documents filed by the petitioner along with the reply tendering the explanation.

5. It was further submitted by the learned advocate for the petitioner that the petitioner is aware about the alternative remedy available under Section 107 of the GST Act. However, the same is not an efficacious remedy in view of the fact that the respondent – Assessing Officer has not dealt with the submissions of the petitioner and no chance of proper hearing has been given to the petitioner which is in the breach of principles of natural justice. Learned advocate has relied upon the decision of the Hon’ble Apex Court in the case of ***“Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in (1998) 8 SCC 1”***, wherein it is held that there is no bar to writ jurisdiction if there is violation of principles of natural justice.

6. It was therefore submitted that the matter may be remanded back to the respondent – Adjudicating Authority to provide personal hearing to the petitioner and after hearing the petitioner, a fresh denovo order may be passed.

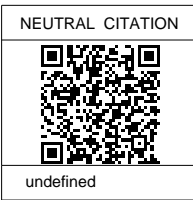


7. On the other hand, learned Assistant Government Pleader Mr. Raj Tanna for the respondent submitted that the opportunity of hearing was provided to the petitioner as recorded in the impugned order. He relied upon Para-3.7 of the impugned order to submit that though the petitioner was requested to produce all the evidence at the time of issuance of show cause notice, the same were not produced.

8. The respondent – Adjudicating Authority has observed in Para-3.7 of the impugned order, which reads as under :-

“3.7 KAPTON ALLOYS PRIVATE LIMITED GSTIN-24AAECK8664P1ZT having registered office at SURVEY NO 181, KABODARA, TALOD, 383305 Gujarat, is hereby requested to produce at the time of showing cause, all the evidences upon which they intend to rely in support of their defense. They are further advised to indicate in their written explanation, as to whether they desire to be heard in person before the case is adjudicated. If no mention is made about this in their written explanation, it would be presumed that they do not desire to have personal hearing.”

9. The above observations however are in contradiction to Para-19 of the reply dated 22.11.2021 filed by the petitioner to the show cause notice, which reads as under :-



“19. We may be heard in person before the case is decided.”

10. Thus, it is evident that the respondent – Adjudicating Authority has failed to provide any opportunity of hearing to the petitioner though he has prayed in the written submissions.

11. In such circumstances, there is a breach of the principles of natural justice as held by the Hon’ble Apex Court in the case of ‘Whirlpool Corporation’ (supra).

12. In view of the foregoing reasons, we are of the opinion that the impugned order is required to be quashed and set aside only on the ground of violation of the principles of natural justice by not providing opportunity of hearing as contemplated in Section 75(4) of the CGST Act, more particularly, when the petitioner has prayed for such opportunity of hearing in the reply. The impugned order dated 29.12.2021 passed by the respondent – Adjudicating Authority is accordingly quashed and set aside and the matter is remanded back to the respondent – Adjudicating Authority to pass a fresh *denovo* order after giving opportunity of



hearing to the petitioner and the petitioner is also permitted to raise all the contentions in accordance with law. Such exercise shall be completed within a period of Twelve weeks from the date of receipt of copy of this order.

13. The petition is accordingly disposed off. Notice is discharged.

(BHARGAV D. KARIA, J)

(D.N.RAY, J)

SALIM/

