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WP-29375-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

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HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 22nd OF OCTOBER, 2024WRIT PETITION No. 29375 of 2024*M/SFUTURE CONSUMER LIMITED**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Aditya Goyal - Advocate for the petitioner.

Shri Anand Soni - Additional Advocate General for the respondent / State.

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ORDER

Per. Justice Vivek Rusia

Petitioner has filed the present petition challenging the order dated 24.08.2023 passed by the respondent Deputy Commissioner, State Tax, Circle-14, Indore under Section 73 of GST Act, whereby the tax liability of Rs.86,73,188/- + interest and penalty, in total 1,16,65,438/- has been imposed.

02. Instead of availing the remedy of appeal against the impugned order, the petitioner has approached this Court by way of writ petition seeking quashment of the impugned order by placing reliance on a judgment passed by Division Bench of this Court vide order dated 05.12.2023 in *Writ Petition No.13618 of 2023 (M/s Technosys Security System Private Limited V/s Commissioner, Commercial Taxes and another)*.

03. Shri Aditya Goyal, learned counsel for the petitioner submits that the Division Bench in case of *M/s Technosys Security System Pvt. Ltd. (supra)* has



held that the petitioner was entitled for personal hearing as contemplated under sub-section (4) of Section 75 of GST Act. As a result of which, the impugned proceedings after the stage of the reply to the show-cause notice were set aside with the direction to provide an opportunity of hearing, therefore, the similar relief be granted to the petitioner.

04. *Per contra*, Shri Anand Soni, learned Additional A.G. for the respondent / State objects that the petitioner is not entitled for the similar relief as granted by the Court in case of *M/s Technosys Security System Pvt. Ltd. (supra)* because in the present case, the petitioner did not even file the reply to the show-cause notice and did not appear before the competent authority. In case of *M/s Technosys Security System Pvt. Ltd. (supra)*, the petitioner filed the reply, but he was not given the opportunity of personal hearing, therefore, the matter was remitted back to the authority.

05. Shri Goyal, learned counsel for the petitioner has strongly placed reliance on a judgment passed by Allahabad High Court in case of *M/s Jai Vindhya Udyog V/s State of U.P. in Writ Tax No.190 of 2023*, in which the Division Bench has set aside the impugned order passed under Section 74 of the GST Act.

We have heard learned counsel for the parties at length and perused the entire record.

06. Petitioner is a Public Limited company having its presence in the address mentioned in the memo of parties above. Petitioner is a Food led - FMCG brand engaged in the business of branding, manufacturing, processing, selling and distribution of consumer products. The Petitioner's product categories include food, home care, personal care and beauty. Petitioner is registered with GST No.23AABCS0279B1ZW.



07. Respondent No. 3 i.e. Deputy Commissioner State Tax, Circle -14, Indore is the jurisdictional authority who has been empowered to adjudicate the case of petitioner pertaining to Goods and Services Tax matters. Respondent No. 2 is Commissioner of State Tax, having its jurisdiction over petitioner for Goods and Service Tax matters. Respondent No.1 is the Finance Department, State of Madhya Pradesh having their jurisdiction over petitioner to exercise its legislative power to make laws for the whole or any part of the territory in Madhya Pradesh.

08. The respondent served the notice in form GST ASMT-10 dated 26.06.2023 to the petitioner intimating discrepancies in the return after the scrutiny, the petitioner was directed to explain the reasons for the said discrepancies. The petitioner did not appear before the authority, therefore, a show-cause notice under Section 73(1) of GST Act dated 24.08.2023 was issued directing the petitioner to appear on 25.09.2023. Admittedly, the petitioner neither appeared nor filed the reply hence, the final order dated 30.10.2023 was passed. The petitioner did not prefer any appeal within the period of limitation and directly approached this Court by way of writ petition solely on the ground that the opportunity of personal hearing as contemplated under Section 75(4) of GST Act has not been afforded to him, therefore, the order is unsustainable in law.

09. Sub-section (4) of Section 75 of GST Act says that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with the tax or penalty or any adverse decision is contemplated against such person. The Division Bench of this Court has held that the opportunity of hearing means persons opportunity of hearing and if such personal opportunity of hearing is not provided then the order is unsustainable and liable to be set aside.

10. As per sub-Rule 4 an opportunity of personal hearing shall be granted where a request is received in writing from a person chargeable with the tax or



penalty. Even if the request is not received in writing, the oral request is also liable to be accepted provided the person appears and makes a request for grant of an opportunity of hearing, then only he can plead or claim an opportunity of personal hearing. When the person after receipt of the show-cause notice choose not to appear before the authority to file a reply or to make a request for personal hearing, then after passing the final order, he cannot allege that an opportunity of hearing has been denied to him, therefore, the case of the petitioner is distinguishable from the case of *M/s Technosys Security System Pvt. Ltd. (supra)*.

11. In view of the above, this Writ Petition stands **dismissed**. The petitioner, if so advised, may file an appeal on merit before the Appellate Authority alongwith an application for condonation of delay.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

Divyansh