(2020) 07 GUJ CK 0013

In the Gujarat High Court

Case No : R/Special Civil Application No. 7292 Of 2020

Hitech Projects Pvt. Ltd APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 06-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Excise Rules, 2002 — Rule 25(1), 25(2), 26Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 — Rule 3, 6(1)
Finance Act, 2019 — Section 125, 126, 127(4), 127(8), 129
Central Excise Act, 1944 — Section 11AA, 11AC(1)(c), 11A(4), 34

Citation : (2020) 07 GUJ CK 0013

Hon'ble Judges : Vikram Nath, CJ;J.B.Pardiwala, J

Bench : Division Bench

Advocate : Dhaval Shah, Ankit Shah

Final Decision : Disposed Of

Judgement

Sr. No,Challan Nos. & Date,Amount (Rs.)

1,01693 Dated 30.6.2018,"80,485/-

2,00663 Dated 05.7.2017,"1,03,355/-

3,00664 Dated 05.7.2017,"23,015/-

,Total,"2,06,855/-

3,00023 dated 18.04.2018,"34,453/-

4,00024 dated 18.04.2018,"26,828/-

,Total,"69,054/-

17 According to Mr. Ankit Shah, there is nothing on record to indicate that the writ applicants have made the total deposit of Rs.8,92,195/- as asserted",,

for the purpose of availing the benefit of the Scheme. He would submit that although an opportunity of personal hearing was given to the writ,,

applicants, yet the same was not availed. The writ applicants failed to appear before the concerned authority.",,

18 The aforesaid stance of the respondents is rebutted by the writ applicants in the form of an affidavit in rejoinder. In para 9 of the affidavit in,,

rejoinder, the following averments have been made:",,

â??9 That the Petitioner was called for the personal hearing on 7.05.2020, which was the time, entire India was in complete lockdown situation and",,

Petitionerâ??s office was completely closed. Even the Respondent office must be closed during these days and therefore, there was no question of",,

granting personal hearing on 7.05.2020. The Petitioner was conscious about the situation and therefore requested to grant personal / â??e- hearingâ?.,,

If the answering respondent wanted to complete the process in lockdown situation then fair opportunity of hearing should be granted to the Petitioner,,

but they knew that no one will come for personal hearing and they can straight away decide the matter. If the answering respondent really wanted to,,

decide fairly then they could have send email for the clarification that there is no facility available for the â??e- hearingâ? but they kept the petitioner,,

in dark and directly issue Form SVLDRS3. When the Honâ??ble Courts and many Government offices were working on Virtual Platform, why",,

canâ??t respondent office work on virtual platform and stick to personal hearing. As a matter of fact, instance of personal hearing is contrary to the",,

direction issued by the Central Government during Lockdown period. This approach of the Respondent clearly shows how perverse attitude of the,,

authorities just to frustrate the interest of the Petitioner.â??,,

19 Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that the writ",,

applicants could not be said to have got a fair opportunity of hearing before the concerned respondent. We are at one with Mr. Dhaval Shah, the",,

learned counsel appearing for the writ applicants that the concerned respondent could not have fixed the personal hearing during the period of,,

lockdown. We are of the view that one opportunity should be given to the writ applicants to put forward their case before the concerned respondent in,,

person.,,

20 We do not propose to go into the merits of the various issues raised as

regards the claim to avail the benefit under the Scheme. We are of the view,,

that all the relevant aspects of the matter should be explained by the writ applicants before the concerned respondent in person.,,

21 In the result, the impugned communication in Form SVLDRS-3 is hereby quashed and set aside. The matter is remitted to the respondent No.3",,

herein i.e. the Designated Committee, Ahmedabad-South for fresh hearing on the issues in question. The respondent No.3 shall fix a particular date of",,

personal hearing and intimate the same in writing to the writ applicants. The writ applicants upon receipt of such intimation shall appear before the,,

respondent No.3 and make their submissions. Thereafter, the respondent No.3 shall pass a fresh order in accordance with law.",,

21.1 Let this entire exercise be undertaken at the earliest and shall be completed in any case within a period of six weeks from the date of the receipt,,

of the writ of this order. We are conscious of the fact that the time period to make the deposit of the requisite amount for the purpose of availing the,,

benefit under The Scheme came to an end on 30.06.2020. The stance of the writ applicants is that they have made the requisite payment towards,,

deposit, whereas, the stance of the Department is that the amount has not been deposited. Ultimately, it is for the Department to verify from the",,

records available with them as regards the amount deposited by the writ applicants way back in 2015-16. In the event ultimately if some amount has to,,

be deposited, then despite the time limit having expired the Department shall accept the payment in view of the fact that this litigation was pending",,

before this Court.,,

22 With the aforesaid directions, this writ application stands disposed of.",,