
(2015) 09 BOM CK 0243

In the Bombay High Court

Case No : Writ Petition No. 8940 of 2015

Matrix Publicities and Media (I) Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 40 STR 447

Hon'ble Judges : S.C. Dharmadhikari and B.P. Colabawalla, JJ.

Bench : Division Bench

Advocate : Prasad Paranjape and Jas Sanghavi i/b. PDS Legal, for the Appellant;
Pradeep S. Jetly and Jitendra B. Mishra, for the Respondent

Judgement

1. Rule. By consent of parties, rule is made returnable forthwith and heard finally. By this Petition under Article 226 of the Constitution of India, the Petitioners have challenged two orders, both dated 31st July, 2015 (Annexures A1 and A2 to the Petition), under which the Refund Applications of the Petitioners were rejected by the Respondents.

2. Mr. Paranjape, learned counsel appearing on behalf of the Petitioners, submitted that in the facts and circumstances of this case, the impugned orders were passed on the merits of the Refund Applications but without affording an opportunity of any oral hearing to the Petitioners. He submitted that according to the Petitioners, the services provided by them are qualified as export of service under Rule 6A of the Service Tax Rules, 1994 r/w. Rule 3 of the Place of Provision of Services Rules, 2012. In these circumstances, the Petitioners vide their letters dated 19th March, 2015 and 18th June, 2015 filed Refund Applications alongwith documents as stated in the said letters. In fact, the said letters categorically stated that a personal hearing be accorded to the Petitioners before any adverse order is passed in relation to their refund claim, and they reserve their right to make submissions thereafter. Mr. Paranjape submitted that despite this, the impugned orders were passed on the merits of the Refund Applications and

without giving the Petitioners any prior hearing.

3. Mr. Jetly, learned counsel appearing on behalf of the Respondents, could not dispute that a prior hearing (oral/personal) was not given to the Petitioners before the impugned orders were passed.

4. In light of the above concession and the undisputed factual position, we allow the Writ Petition. We set aside the impugned orders and direct that the Refund Applications of the Petitioners shall be heard afresh by the Competent Authority.

5. Before passing a fresh speaking order, the Competent Authority shall give an opportunity of a personal hearing to the Petitioners and allow them to make their submissions and produce such other material as is permissible in law. After due consideration of the oral submissions and documents, the Competent Authority shall pass a speaking order assigning reasons. It is clarified that we have not expressed any view on the merits of the Refund Applications and all contentions raised in that regard by both parties are kept open. While deciding the matter afresh, the Competent Authority shall not be influenced by any of the earlier conclusions as recorded in the impugned orders, each of which are quashed and set aside. Rule is made absolute in the aforesaid terms and with the above directions. However, we leave the parties to bear their own costs.