

(2024) 08 GAU CK 1111
In the Gauhati High Court
Case No : WP(C) Of 4172 Of 2024

M/S Brahmaputra Television Network

APPELLANT

Vs

Union Of India And 6 Ors

RESPONDENT

Date of Decision : 21-08-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Finance Act, 1994 — Section 73(1)
Central Goods and Services Tax Act, 2017 — Section 174(2)

Citation : (2024) 08 GAU CK 1111

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : RB Phookan, K Phukan

Final Decision : Dismissed

Judgement

Devashis Baruah, J

1. Heard Mr. RB Phookan, the learned counsel appearing on behalf of the petitioner. Ms. K Phukan, the learned CGC appears on behalf of the Union of India. None appears on behalf of the GST on call.

2. The instant writ petition has been filed by the petitioner challenging the show-cause notice dated 22.10.2021 as well as the Order-In-Original dated 18.06.2024. It is relevant to take note of that the petitioner was issued a demand cum show cause notice dated 22.10.2021, asking the petitioner to show cause as to why service tax including cess amounting to Rs.30,19,653/-for the period 2016-17 should not be demanded and recovered from him under the proviso to Section 73(1) of the Finance Act, 1994 read with Section 174(2) of the CGST Act, 2017 along with applicable interest and penalty. There is no denial to the fact that the show cause notice was received. However, the petitioner chose not to file any show cause reply. It is further seen that on various occasions, the petitioner was asked to appear by issuance of notice as is apparent from Annexure-2 and Annexure-3 to the writ petition, thereby fixing a specific time for

giving an opportunity of hearing to the petitioner. However, it is seen that the petitioner did not avail the opportunity on account of certain treatment of the petitioner. However, there is no documentary evidence in support thereof.

3. It is further seen that on 18.06.2024, the Order-In-Original which has been impugned in the instant proceedings has been passed, thereby confirming to the demand of service tax including cess amounting to Rs.30,19,653/- and additionally the applicable interest and penalty. It is also seen from the said order that the order was received on 26.06.2024.

4. At this stage, this Court, however, finds it very relevant to observe that the impugned order dated 18.06.2024 is not a part of the record of the instant writ proceedings, but the same was duly handed over during the course of the hearing. A perusal of the said order also shows that an appeal can be filed against the order dated 18.06.2024 to the Commissioner (Appeals), Customs, CGST and Central Excise (NER), GST Bhawan.

5. In the backdrop of the above, a question, therefore, arises as to whether this Court should at all entertain the instant writ petition taking into account that an efficacious alternative remedy is available.

6. At this stage, this Court finds it very pertinent to take note of a recent judgment of the Supreme Court in the case of PHR Invent Educational Society Vs. UCO Bank and others reported in (2024) 6 SCC 579 and more particularly to the observations so made at paragraph 23 of the said judgment, which is reproduced herein under:-

"23. It could thus be seen that, this Court has clearly held that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person. It has been held that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. The Court clearly observed that, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc. the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi-judicial bodies for redressal of the grievance of any aggrieved person. It has been held that, though the powers of the High Court under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved by this Court. The Court further held that though the rule of exhaustion of alternative remedy is a rule of discretion and not one of compulsion, still it is difficult to fathom any reason why the High court should entertain a petition filed under Article 226 of the Constitution."

7. From a perusal of the above quoted paragraph, it would be seen that the High Court should not ordinarily entertain a writ petition under Article 226 of the

Constitution, if an effective remedy is available to the aggrieved person. The Supreme Court further emphasized that this Rule should be applied with great rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. It was further observed that though the powers under Article 226 of the Constitution are of widest amplitude, still the courts cannot be oblivious of the rules of self-imposed restraint evolved.

8. This Court further finds it very relevant to take note of another judgment of the Supreme Court in the case of M/S Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer cum Assessing Authority and Ors, reported in (2023) 109 GSTR 402. This judgment is being duly referred to by this Court taking into account as to under what circumstances, the Writ Court can exercise its jurisdiction inspite of availability of alternative remedy. In the said judgment, the Supreme Court observed that in cases where: (i) the writ petition seeks enforcement of any of any fundamental rights; (ii) where there is a violation of the principles of natural justice; (iii) where the order or the proceedings is wholly without jurisdiction; (iv) where the vires of an Act is challenged; or (v) where pure questions of law is raised. In such circumstances, this Court can exercise its writ jurisdiction, inspite of the availability of the alternative remedy.

9. In the backdrop of the above, let this Court take note of the case made out by the petitioner. From the facts narrated above, it would be seen that the petitioner received the show cause notice dated 22.10.2021, but the petitioner did not take that opportunity of submitting a reply. It is further seen that the petitioner was duly given the opportunity of personal hearing, however, the petitioner did not avail such opportunity. Under such circumstances, the question of violation of the principles of natural justice do not arise. In addition to that, the other parameters where the writ petition can be entertained is not met in the instant proceedings.

10. The learned counsel appearing on behalf of the petitioner submitted by drawing reference to the impugned order dated 18.06.2024 that if no relief is granted by this Court, the petitioner would not be able to produce the documentary evidence even at the appellate stage. This argument so made does not inspire this Court to exercise the writ jurisdiction for two reasons. First, the petitioner had the opportunity of filing the show cause reply and submit the necessary documents which the petitioner for reasons best known did not do.

Secondly, the petitioner would always be at liberty to place the documents in support of the Appeal.

11. Under such circumstances, this Court is not inclined to entertain the writ petition for the reasons disclosed above. It is, however, made clear that the dismissal of the instant writ petition shall not prejudice the petitioner, if any appeal is filed. In addition to the above, the petitioner would be at liberty to raise all such objections to the impugned order dated 18.06.2024 as permissible under

the law.