(2018) 09 BOM CK 0129

In the Bombay High Court

Case No : Writ Petition No.762 Of 2018

Oriental Containers Ltd. APPELLANT

Vs

State of Goa, through its Chief Secretary, having office at Secretariat Complex, Porvorim, Goa RESPONDENT

Date of Decision : 03-09-2018

Acts Referred:
Goa Value Added Tax Act, 2005 — Section 29

Citation : (2018) 09 BOM CK 0129

Hon'ble Judges : N.M. Jamdar, J;Prithviraj K. Chavan, J

Bench : Division Bench

Advocate : Abhijit Kamat, P. Dangui

Final Decision : Dismissed

Judgement

N.M. Jamdar, JÂ

1. Rule.Â Rule made returnable forthwith.Â Learned Government Advocate waives service.Â TakenÂ for disposal.Â Â

2. Heard learned Counsel for the parties.Â The learned Counsel for the Petitioner does not press for prayer clause (a) of the Petition.Â

3. The Petitioner has sought to challenge the order dated 31 March 2018Â passed by the Respondent No. 3.Â The main contention raised by the

Petitioner is breach of principles of natural justice.

Following averments are made by the Petitioner on oath :

â??10.The Respondent No.3 thereafter issue a reminder directing the Petitioner to remain present for hearing. The said reminder was dated

24/10/2017 directing the Petitioner to remain present on 24/10/2017 itself. However, it appears that the said reminder was never sent to the

Petitioner.Â The Respondent No.3 changed the date for appearance to 13/11/2017 on the same letter.Â The said notice came toÂ be posted on

15/11/2017, i.e. after the date on which the Petitioner was required to attend the hearing.Â Copy of the notices dated 24/10/2017 along with the

Speed Post Receipt are annexed thereto as Exhibit C Colly.

11. The Petitioner received the said notices only on 16/11/2017.Â Since the date for appearance had already passed by the time the Petitioner

received the notices, the Petitioner vide his letter dated 22/11/2017 sought time. Copy of the letter dated 22/11/2017 is annexed hereto as Exhibit D.

12. Petitioner was surprised to receiveÂ two assessment orders dated 31/03/2018.Â The same were served on the Petitioner only on 11/05/2018.Â

It appears from a perusal of the said Orders that the said Orders were made on 11/05/2018 and only back dated to 31/03/2018 to get out of the bar of

limitation prescribed under Section 29 of the Goa VAT Act, 2005 which would expire on 31/03/2018.Â Annexed hereto as Exhibit E Colly are copies

of the assessment orders.

13. Petitioner states that the orders mentioned that several oral reminders were made to the Petitioner to appear for the hearings. Petitioner states that

this is completely untrue and as borne out from the records, there was only one reminder for hearing asking the Petitioner to attend the hearing on

13/11/2017 which was itself posted on 15/11/2017 and received by the Petitioner on 16/11/2017.Â Â Thereafter the Petitioner had sought time for

hearing vide his letter dated 22/11/2017 which was not responded to at all by the Respondent No.3.

14. Petitioner vide applications dated 07/06/2018 and further letter dated 03/07/2018 sought for review of the assessment orders passed by the

Respondent No.3. Petitioner pointed out that the notice requiring the Petitioner to attend the hearing on 13/11/2017 was served on the Petitioner on

16/11/2017 and hence Petitioner was prevented from appearing for the said hearing.Â The Petitioner vide his further letter dated 09/07/2018

requested the Respondent No.3 to grant a personal hearing to the Petitioner and decide the review expeditiously.Â Petitioner also pointed out the fact

that the Respondent No.3 had not responded to the request of the Petitioner made in letter dated 22/11/2017 for a hearing and raised several other

grounds in the review. Annexed hereto as Exhibit F Colly are copies of the review applications and letters dated 07/06/2018, 03/07/2018 and

09/07/2018.

15. Petitioner states that without even affording the Petitioner an opportunity of being heard on the review filed by the Petitioner, the Respondent No.3

has passed an order dated 12/0-7/2018 stating simply therein that there are no grounds for review.â??

4. Based on these averments, following contention is raised by the Petitioner.Â

â??Petitioner submits that the notice directing the Petitioner to appear for hearing on 13/11/2017 was posted by the Respondent No.3 on 15/11/2017

and served on the Petitioner on 16/11/2017, i.e. after the date on which the Petitioner was required to attend the hearing.Â This being the case, the

Petitioner was unable to be present before the Respondent No.3 for the assessment proceedings and thus the Respondent No.3 proceeded to decide

the matter ex-parte without hearing the Petitioner.â??

5. The Petition was adjourned on various occasions to enable the State to file reply.Â The learned Additional Government Advocate states that he

has taken instructions from Respondent No.2- Commissioner and he states that factual assertions made by the Petitioner as above are correct.Â If

the factual assertions made by the Petitioner,Â which we have reproduced are correct, then the case for breach of principles of natural justiceÂ

before passing the impugned order is made out.

6. In the circumstances, prayer as sought for by the Petitioner will have to be allowed and the Commissioner will have to now proceed after giving

hearing to the Petitioner.

7. Accordingly, the Order dated 31 March 2018 is quashed and set aside.Â The proceedings are restored before the Respondent No.3.Â The

Petitioner will appear before the Respondent No.3 on 24 September 2018 at 10.30 a.m.Â Since this order is passed in the presence of the Advocate

for the Petitioner, no separate notice for the Petitioner is required. Thereafter, the Respondent No.3 will proceed as per law and passÂ Â appropriate

orders within eight weeks thereafter.

All contentions, on merits, are kept open.Â

8. Rule is made absolute in above terms.Â No costs.Â