
(2016) 06 BOM CK 0162
In the Bombay High Court
Case No : Writ Petition No. 233 of 2016

Tyresoles India Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Citation : (2016) 340 ELT 73

Hon'ble Judges : F.M. Reis and Nutan D. Sardesai, JJ.

Bench : Division Bench

Advocate : Shri Prashil Arolkar, Advocate, for the Petitioner; Shri C.A. Ferreira, Advocate, for the Respondent

Final Decision : Allowed

Judgement

F.M. Reis, J. (Oral)—Heard Mr. P. Arolkar, learned counsel appearing for the petitioner and Mr. C.A. Ferreira, learned counsel appearing for the respondent nos. 3 and 4.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. C.A. Ferreira, learned counsel appearing for the respondent nos. 3 and 4 waives service.

4. The above petition takes an exception to the order dated 23-11-2015 passed by the respondent no. 4 thereby inter alia confirming the demand of Rs. 1,86,73,790/- under Section 73(1) of the Finance Act, 1994 and imposing a penalty at the rate of 1% of the demanded service tax on the said amount which was not paid till the date of payment of service tax subject to 50% of the service tax of the said amount of Rs. 1,86,73,790/-. A further penalty of Rs. 10,000/- was also imposed for failure to pay the aforesaid determined amount.

5. The learned counsel appearing for the petitioner has assailed the impugned order passed by the respondent no. 4 essentially on the ground that the matter was posted for final hearing on 21st and 22nd September, 2015 for the first time

when the petitioner filed an application inter alia bringing to the notice of the respondent no. 4 that a similar dispute raised by the petitioner was under challenge before the Apex Court and as such, the proceedings be kept in abeyance. The learned counsel further pointed out that the respondent no. 4 while refusing such request also did not grant any adjournment but proceeded to adjudicate the matter and pass the impugned order. The learned counsel further pointed out that even in terms of the Rules, the petitioner otherwise was entitled for three adjournments and according to him, in the present case on the first date of hearing itself when the matter was posted for final hearing, the respondent no. 4 without giving any adequate opportunity to the petitioner of a personal hearing proceeded to pass the impugned order. The learned counsel further pointed out that even on merits the petitioner have a strong ground to oppose the demand as according to him the petitioner had paid VAT on 70% of the amount demanded by the respondents. The learned counsel further pointed out that the petitioners are also challenging the validity of the relevant provisions which are invoked by the respondents. The learned counsel further submits that in such circumstances the petitioner have filed the said application to keep the matter in abeyance as similar issues are raised before the Apex Court. The learned counsel further pointed out that the impugned order passed by the respondent no. 4 is in gross violation of the principles of natural justice as the petitioner have not been given an adequate opportunity of being heard which resulted in grave prejudice to the petitioner. The learned counsel further pointed out that the petitioner is not liable to pay any amount to the respondents on the alleged claim and consequently, the impugned order deserves to be quashed and set aside and the matter be remanded to the respondent no. 4 to decide the alleged demand afresh after hearing the petitioner in accordance with law. The petitioner also offers to pay the costs of Rs. 10,000/- to the respondents and Rs. 5,000/- to the State Legal Services Authority within four weeks from today.

6. On the other hand, Mr. C.A. Ferreira, learned counsel appearing for the respondent nos. 3 and 4 has supported the impugned order. The learned counsel further pointed out that the petitioner have an alternate remedy to challenge the impugned order and on this ground alone the petition deserves to be rejected. The learned counsel further submits that the petitioner have forfeited their right of personal hearing as they have failed to remain present at the time of the final hearing nor sought an adjournment but however, only filed a misconceived application to keep the proceedings in abeyance. The learned counsel thereafter has taken us through the impugned order as well as the application filed by the petitioner to point out that there is no specific request made by the petitioner to adjourn the hearing fixed on the relevant dates. The learned counsel as such submits that the petition be rejected. The learned counsel further pointed out that the respondents are entitled to raise the demand and all the contentions raised by the petitioner on merits deserve no consideration.

7. We have given our thoughtful consideration to the rival contentions of the learned counsel and with their assistance we have also gone through the records.

8. We do not propose to decide on merits the rival contentions put forward by the learned counsel. But however, we are only examining the matter as to whether there is a violation of the principles of natural justice while passing the impugned order. It may not be necessary to note that merely because there is an alternate remedy, it does not preclude this Court to exercise jurisdiction under Articles 226 and 227 of the Constitution of India when a specific case is made out by the petitioner that the order impugned has been passed in gross violation of the principles of natural justice and/or that such order was passed without jurisdiction.

9. In the present case, it is not disputed that the matter was posted for the first time for final hearing on the said two dates namely 21st and 22nd September, 2015. The fact that there were some proceedings pending before the Apex Court filed by the petitioner is also not in dispute. In such circumstances, we find that in case the respondent no. 4 felt it expedient to proceed to adjudicate the demand raised by the respondents by rejecting the request of the petitioner to keep the matter in abeyance, it would be appropriate and in the interest of justice to give an opportunity to the petitioner of being heard before proceeding to pass the final order. It is not the contention of the respondents that the petitioner have been deliberately delaying the adjudication of the alleged claim put forward by the respondents. In the peculiar facts and circumstances of the case and taking note of the fact that the application filed by the petitioner on 13-9-2015 can be construed to be an application for deferring the hearing fixed on 21-9-2015, we find that the impugned order passed by the respondent no. 4 stands vitiated for violation of the principles of natural justice. Needless to say that it was expected of the petitioner to remain present on the relevant dates of hearing and not to take a casual approach by tendering the application on the assumption that such request would be granted. For such conduct of the petitioner, we find that the petitioner is liable to pay costs to the respondents. Such costs are quantified at Rs. 15,000/- to be paid by the petitioner, viz. Rs. 10,000/- to be paid to the respondents and Rs. 5,000/- to be paid to the Goa State Legal Services Authority within four weeks from today. In such circumstances, we pass the following order :

ORDER

- (i) The impugned order dated 23-11-2015 is quashed and set aside.
- (ii) File No. CX-ST/SCN/Tyresoles/MRS/2/07-08/4805 is restored to the file of the respondent no. 4.
- (iii) The respondent no. 4 shall proceed to hear the said demand on the petitioner afresh after hearing the petitioner in accordance with law subject to payment of costs of Rs. 15,000/- in the manner stipulated herein above as condition precedent.
- (iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly.