



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 16487 OF 2023

KEC International Ltd. through its authorized
representative Mr. Sanjay Desai

...Petitioner

Versus

The Union of India through The Secretary &
Anr.

...Respondents

Mr. Bharat Raichandani a/w Mr. Aman Mishra i/b UBR Legal for
Petitioner.

Mr. Eshaan Saroop i/b Mr. Vikas T. Khanchandani for Respondent
No. 2.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 7th May 2024

PC :

1. Petitioner is impugning a notice dated 28th March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 (“the Act”), order dated 4th May 2023 passed under Section 148A(d) of the Act and the notice also dated 4th May 2023 issued under Section 148 of the Act.

2. Since the pleadings are completed, we decided to, with the consent of Counsels of the parties, dispose the petition.

3. Various grounds have been raised, but the main ground that Mr. Raichandani pressed was that in the order dated 4th May 2023 passed under Section 148A(d) of the Act, the officer does not deal with any of the submissions made by Petitioner. Mr. Raichandani

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submitted that when the impugned order itself exposes the hollowness in the thinking of the Assessing Officer (“AO”), even granting approval under Section 151 of the Act, smacks of total non-application of mind.

4. In paragraph nos. 10 & 11 of the impugned order, the AO copiously reproduces all submissions of Petitioner. In paragraph no. 12, in one sentence, he dismisses all submissions by saying that simply furnishing copies of purchase invoices, E-way Bill, Transport Bill and payment made through banking channels are not sufficient to substantiate that the transaction made by Assessee company with EMI Transmission Ltd. is genuine. According to him, because the Directorate General of GST, Mumbai has identified one Curzen Infraprojects Pvt. Ltd. (formerly known as Blue Sea Commodities) was generating fake/bogus invoices for passing of fraudulent Input Tax Credit (ITC) without supply of goods to various companies and EMI Transmission Ltd. was one of them, because Petitioner dealt with EMI Transmission Ltd., the said transaction is non-genuine.

5. The AO is only referring to the information received from the Directorate General of GST. There is absolutely nothing to indicate that he independently applied his mind to the material received or that he has analysed the response from Petitioner with the material received, which reflects total non-application of mind.

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6. Petitioner has submitted various documents to show that the goods purchased from EMI Transmission Ltd. were actually supplied to third parties and we would agree with Petitioner that without purchase there can not be a sale.

7. In the circumstances, we hereby quash and set aside the impugned order dated 4th May 2023 and remand the matter for *de-novo* consideration. The matter will be considered by the Jurisdictional Assessing Officer (“JAO”), who will be other than Lehandas Arjun Janbandhu, who passed the impugned order. Consequentially, the notice dated 4th May 2023 issued under Section 148 of the Act is also quashed and set aside.

8. Final order on this notice issued under Section 148A(b) of the Act, shall be passed on or before 31st July 2024. The order to be passed shall be a reasoned order dealing with all submissions of Petitioner in detail and shall be passed after giving a personal hearing to Petitioner, notice whereof shall be communicated at least five working days in advance.

9. Mr. Raichandani requests, without prejudice to Petitioner’s rights and contentions, a direction be given to the JAO to provide all the documents and information received based on which a notice under Section 148A(b) of the Act was issued. Ordered accordingly.

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10. Within two weeks from the date this order is uploaded, Petitioner shall be provided all the documents and within two weeks thereafter Petitioner may file further submission, if so advised.

11. Petition disposed. No order as to costs.

12. All rights and contentions of parties are kept open.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

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