RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D. B. Civil Writ Petition No. 19799/2023

M/s PVR Inox Limited, (Formerly known as M/s Inox Leisure Limited) Registered Office at Vaibhav Complex, Amrapali Circle, Vaishali Nagar, Jaipur through Mr. Mukesh Kumar. Company Secretary and Compliance Officer

----Petitioner

Versus

1. Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat, Jaipur.
3. Joint Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Taxes, Kar Bhawan, Jaipur.
4. Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Tax Department, Kar Bhawan, Jaipur

----Respondents

with

D. B. Civil Writ Petition No. 19801/2023

M/s PVR Inox Limited, (Formerly known as M/s Inox Leisure Limited) Registered Office at Vaibhav Complex, Amrapali Circle, Vaishali Nagar, Jaipur through Mr. Mukesh Kumar. Company Secretary and Compliance Officer

----Petitioner

Versus

1. Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat, Jaipur.
3. Joint Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Taxes, Kar Bhawan, Jaipur.

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4. Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Tax Department, Kar Bhawan, Jaipur

----Respondents

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D. B. Civil Writ Petition No. 19802/2023

M/s PVR Inox Limited, (Formerly known as M/s Inox Leisure Limited) Registered Office at Vaibhav Complex, Amrapali Circle, Vaishali Nagar, Jaipur through Mr. Mukesh Kumar. Company Secretary and Compliance Officer

----Petitioner

Versus

1. Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat, Jaipur.
3. Joint Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Taxes, Kar Bhawan, Jaipur.
4. Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Tax Department, Kar Bhawan, Jaipur

----Respondents

D. B. Civil Writ Petition No. 19804/2023

M/s PVR Inox Limited, (Formerly known as M/s Inox Leisure Limited) Registered Office at Vaibhav Complex, Amrapali Circle, Vaishali Nagar, Jaipur through Mr. Mukesh Kumar. Company Secretary and Compliance Officer

----Petitioner

Versus

1. Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi-110001
2. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat,

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Jaipur.

3. Joint Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Taxes, Kar Bhawan, Jaipur.

4. Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Tax Department, Kar Bhawan, Jaipur

----Respondents

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D. B. Civil Writ Petition No. 19814/2023

M/s PVR Inox Limited, (Formerly known as M/s Inox Leisure Limited) Registered Office at Vaibhav Complex, Amrapali Circle, Vaishali Nagar, Jaipur through Mr. Mukesh Kumar. Company Secretary and Compliance Officer

----Petitioner

Versus

1. Union of India, through Secretary (Revenue), Department of Revenue, Ministry of Finance, North Block, New Delhi-110001

2. State of Rajasthan, through Secretary Finance, Government of Rajasthan, Government Secretariat, Jaipur.

3. Joint Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Taxes, Kar Bhawan, Jaipur.

4. Commissioner, Circle B, Enforcement Wing Rajasthan-II, State Tax, Commercial Tax Department, Kar Bhawan, Jaipur

----Respondents

For Petitioner	:	Mr. Gopal Mundhra, Advocate through Video Conferencing Mr. Daksh Pareek, Advocate
For Respondents	:	Mr. Sandeep Taneja, Additional Advocate General. Mr. Sandeep Pathak, Advocate with Mr. Akshat Sharma, Advocate. Mr. Punit Singhvi, Advocate with Mr. Ayush Singh, Advocate, Mr. Ajay S. Rathore, Advocate & Ms. Shraddha Mehta, Advocate.

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HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

REPORTABLE

19/07/2024

1. Heard.

2. Since these writ petitions raise identical issue of law for consideration of this Court, therefore, heard analogously and are being decided by this common order.

3. These writ petitions have been filed by the petitioner in the matter of proceedings drawn and orders passed under Section 7, 9, 15, 50 and 73 of the Rajasthan Good and Services Tax Act, 2017 (for short 'the RGST Act of 2017')/the Central Goods and Services Tax Act, 2017 (for short 'the CGST Act of 2017').

4. Learned counsel for the petitioner would firstly raise a common submission that irrespective of the merits of individual cases, impugned orders have not only violated the principles of natural justice but also mandatory provisions contained in Section 75(4) of the RGST Act of 2017/the CGST Act of 2017 which, in addition to providing an opportunity of hearing by issuance of show cause notice, also mandates the respondents to afford an opportunity of personal hearing once the assessee raises such a demand. According to the petitioner, after the show cause notice was issued, the petitioner submitted its reply and sought to contest the matters on merits without admitting the proposed demand. Petitioner also prayed for grant of opportunity of personal hearing. Referring to various pleadings as contained in the writ petitions as also in the additional affidavits, it is submitted

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that even though Respondents No. 2 to 4 uploaded the notices on the common portal of the Department, the same were not reflected in GSTIN Portal of the petitioner, resulting in violation of statutory provisions.

5. Learned counsels appearing on behalf of the respondents would fairly submit that the Department had uploaded the notices requiring the petitioner to appear before the concerned authority towards affording the petitioner opportunity of personal hearing, consistent with the scheme of Section 75(4) of the RGST Act of 2017/the CGST Act of 2017, it appears that because of technical glitches, the same could not be reflected on the GSTIN Portal of the petitioner. Learned counsels for the respondents would submit that this is merely a technical glitch and cannot be said to be a deliberate action on the part of the respondents in denying opportunity of personal hearing to the petitioner.

6. We have heard learned counsel for the parties.

7. Section 75 of the RGST Act of 2017/the CGST Act of 2017 contains general provisions relating to determination of tax. Sub-section (2) thereof explicitly provides that where any Appellate Authority or Appellate Tribunal or Court concludes that the notice issued under sub-section (1) of Section 74 of that Act is not sustainable for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice was issued under sub-section (1) of Section 73 of that Act. Further, Sub-section (4) of Section 75 of

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RGST Act of 2017/the CGST Act of 2017 provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

8. The aforesaid mandate of law requires that in a case where the person chargeable with tax or penalty seeks an opportunity of hearing, he/she shall be granted such an opportunity provided that such a request is received in writing.

9. The undisputed facts are that the petitioner, after receiving notices, submitted application in each case making a request for affording opportunity of personal hearing. This is clear from the material on record and goes as an undisputed factual position. Learned counsel for the respondents have admitted the fact that even though the respondents intended to grant opportunity of personal hearing to the petitioner and notices to that effect were also uploaded on the portal of the Department, the petitioner's case is that the same were though uploaded on the portal of the Department, but were not reflected on the GSTIN Portal of the petitioner, which also goes as an undisputed factual position. This is clear from the additional affidavit filed by the petitioner and the response received pursuant to that query which is also annexed along with the additional affidavit filed by the petitioner. It is, therefore, apparent that the statutory mandate was not complied with and impugned orders were passed against the petitioner in respect of different assessment years.

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10. As petitioner's right of opportunity of personal hearing in the manner as provided under the law has been violated, we are inclined to set aside the impugned orders on this ground alone.

11. Impugned order are, accordingly, set aside. The matters are remanded back to the competent authority for affording opportunity of personal hearing to the petitioner and passing appropriate orders in accordance with law. The respondents are directed to complete the proceedings in all the cases within a period of two months from today. The petitioner shall not seek any adjournment on the date fixed for its personal hearing. However, it is made clear that this Court has not decided these matters on merits and it will be open for the petitioner to raise all the grounds which are available to it under the law.

12. Writ petitions are, accordingly, allowed.

13. Office is directed to place a copy of this order on record of each writ petition.

(ASHUTOSH KUMAR),J (MANINDRA MOHAN SHRIVASTAVA),CJ

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