

IN THE HIGH COURT OF BOMBAY AT GOA**LD-VC-CW-172-2020**

NEOGRAFIKS (INDIA) PVT. LTD.
a company having registered office at
Lake Plaza, opp. Nehru Stadium,
Fatorda, Margao-Goa. herein duly
represented by the Authorised
Representative Shri Sadashiv M. Pandit,
age about 59 years, Resident of
H.No.30/54, C-5, Shee Datta
Vrindhavan Gardens, Warkhande, Ponda
Goa.

...Petitioners.*Versus*

- 1). The State of Goa,
Through its Chief Secretary,
Having office at Secretariat
Complex, Porvorim-Goa.

- 2) The Commissioner of Commercial
Taxes,
Department of Commercial Taxes,
Government of Goa, having office
at Panaji-Goa.

- 3) The Assistant Commercial Tax
Officer,
Margao Ward, Department of
Commercial Taxes, Government of
Goa, having office at 3rd Floor, Osia
Complex, Near SGPDA Market,
Margao-Goa.

... Respondents.

Mr. S. R. Rivankar, Senior Advocate with Mr. Rama Rivankar, Advocate for the Petitioners.

Mr. Deep Shirodkar, Additional Government Advocate for the Respondents.

**Coram : M. S. SONAK &
M. S. JAWALKAR, JJ.**

Date : 07th September, 2020

ORAL JUDGMENT (Per. M. S. Sonak, J)

Heard Mr. Rivankar, learned Senior Advocate with Mr. Rama Rivankar, learned Advocate for the Petitioners and Mr. Deep Shirodkar, Additional Government Advocate for the Respondents.

2. Taking into consideration the limited issue involved, we issue Rule. Further, at the request of and with the consent of the learned Counsel for the parties, we make Rule returnable forthwith.

3. The challenge in this Petition is to the order/communication dated 10.06.2019 issued by the Assistant Commercial Tax Officer, Margao Ward purportedly to exercise powers under the Goa Value Added Tax Act, 2005 (said Act).

4. The record indicates that the Assistant Commercial Tax Officer has made an ex-parte assessment order on 28.03.2019 against

the Petitioners. Thereupon, the Petitioners, filed what was styled as Review Petition on 12.04.2019 before the Commissioner of Commercial Taxes. Mr. Rivankar states that this was filed invoking the provisions of Section 39(1) of the said Act.

5. The Commissioner, by communication dated 09.05.2019 informed the Petitioners that they have an option to file the Review Petition before the same authorities which had passed the ex-parte assessment order, i.e. Assistant Commercial Tax Officer. This was possibly because the powers of Section 39(1), at least prima facie, are to be exercised by the Commissioner only suo moto.

6. The Petitioners, did not contest the communication dated 09.05.2019, but rather, complied with the same and filed the Review Petition dated 16.05.2019 before the Assistant Commercial Tax Officer seeking review of the ex-parte assessment order dated 28.03.2019.

7. The Assistant Commercial Tax Officer, by the impugned communication dated 10.06.2019 had advised the Petitioners to prefer an appeal against the ex-parte assessment order dated 28.03.2019. It is this communication/order dated 10.06.2019 which is challenged by the Petitioners in this Petition.

8. The impugned communication dated 10.06.2019 reads as follows:

***“DEPARTMENT OF COMMERCIAL TAXES
GOVERNMENT OF GOA***

TIN:30941102611/2019-20/2586

Margao Ward,

Margao.

Dated:10/06/2019.

To,

Neografiks (India) Pvt. Ltd.

Lake Plaza, Opp. Nehru Stadium,

Fatorda, Margao, Goa.

*Sub: Application for review of
Assessment order.*

Ref: Your application dated 16/05/2019.

Sir,

With reference to the above, I am to inform you that being aggrieved by the assessment order for the year 2015-16, you are required to prefer an appeal before Appellate Authority being the order is assessed exparte, due to failure to attend for the assessment year 2015-16.

Yours faithfully,

Sd/-

(Deepak N. Kerkar)

Asst. Commercial Tax Officer

Margao ward.”

9. Admittedly, neither any opportunity of hearing was

furnished to the Petitioners before the aforesaid impugned communication was issued, nor does the impugned communication indicate any reasons therefore. In fact, the impugned communication, does not indicate that the Review Petition of the Petitioners has at all been considered by the Assistant Commercial Tax Officer.

10. Section 39(2) of the said Act reads as follows:-

*“39. REVISION/REVIEW BY COMMISSIONER-
(1)
.....*

(2) Subject to such rules as may be prescribed, any assessment made or order passed under this Act or under the rules made thereunder by any authority appointed under section 13 of this Act, may be reviewed by the respective authority passing it upon an application or of it’s own motion, as the case may be:

Provided that no order of assessment or any other order shall be reviewed after the expiry of five years from the date of order, by any authority under this sub-section.]”

[Emphasis supplied]

11. From the reading of Section of the provisions of Section 39(2) of the said Act, it appears that powers of review have been vested in the respective authorities; either on application by the authority or on its own motion. The proviso to Section 39(2) only

states that such power of review should not be exercised after the expiry of 5 years from the date of the order by any authority under this sub-section.

12. Since the powers of review have been vested in the authorities making their respective orders, there was no justification on the part of the Assistant Commercial Tax Officer, whose ex-parte assessment order dated 28.03.2019 the Petitioners sought to be reviewed, to have issued the impugned communication dated 10.06.2019 simply refusing to exercise his review jurisdiction. This, according to us, amounts to failure to exercise jurisdiction which is lawfully vested in an authority.

13. Since we are satisfied that this is a case of failure to exercise jurisdiction, we have not entertained Mr. Shirodkar's objection to the availability of alternate remedy. Besides, even if it is considered that the impugned communication dated 10.06.2019 amounts to the dismissal of the Petitioners' Review Petition, even then, we find that there was no compliance with principles of natural justice prior to such dismissal. The impugned communication also does not contain any reasons for the dismissal of the Review Petition. In these circumstances as well, there is no case made out for upholding the objection based upon availability of alternate remedy.

14. Since we are satisfied that this is a case where the Assistant Commercial Tax Officer has failed to exercise the jurisdiction vested in him and further since the impugned communication is bereft of any reasons and was made without compliance of principles of natural justice, we set aside the impugned communication dated 10.06.2019 and restore the Petitioner's Review Petition dated 16.05.2019 before the Assistant Commercial Tax Officer for decision on merits and in accordance with law.

15. In this case, the record indicates that the Review Petition was filed on 21.04.2019 which was well within the period of 30 days from the date of the ex-parte assessment order dated 28.03.2019. However, it appears that the same was filed before the Commissioner, who *vide* the communication dated 09.05.2019 directed the Petitioners to present the same before the Assistant Commissioner. This was done by the Petitioners on 16.05.2019. In these circumstances, it is only appropriate that the Assistant Commissioner decides the review petition on its own merits without going into the issue of limitation as such which, in the facts of the present case, can be said to have been complied with.

16. Mr. Rivankar, the learned Senior Counsel for the Petitioners prays that pending the disposal of the Review Petition, the Respondents may be restrained from enforcing the demand which is

to the extent of almost ₹4.50crores. He submits that even if the Petitioners were to file an appeal, the requirement is for deposit of about 10% of the demanded amount which would come to ₹45,00,000/-. He submits on instructions, that the Petitioners, without prejudice to their rights and contentions, will deposit ₹45,00,000/- with the respondents within a period of one month from today.

17. According to us, if the Petitioners indeed deposit the amount of ₹45,00,000/- with the concerned Respondent within a period of one month from today, then, the Respondents, should not take any coercive steps to enforce the demand pending the disposal of the Review Petition. Further, if such amount is indeed deposited within one month from today, then the Assistant Commercial Tax Officer to dispose off the Review Petition on merits within a period of two months from today or within a period of one month from the date of such deposit. However, we make it clear that there will be no question of grant of extension of time for deposit of this amount, particularly, since it represents hardly 10% of the demanded amount. We also note that though the impugned communication was issued on 10.06.2019, this Petition has only been filed in this month. For all these reasons, we make it clear that there will be no further extension of time for deposit of this amount.

18. If this amount is not deposited within one month from today, then, there will be no interim relief. Similarly, there will be no obligation on the Assistant Commercial Tax Officer to decide the review petition within the timeline indicated by us. The Review Petition, will then have to be decided as per its own turn and in accordance with law.

19. The rule in this Petition is made absolute in the aforesaid terms.

20. There shall be no order as to costs.

21. All concerned to act on the basis of the authenticated copy of this Order.

M. S. JAWALKAR, J.

M. S. SONAK, J.

msr.