

*Vinita*

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**WRIT PETITION NO. 284 OF 2011.**

M/s Alcon Real Estate Pvt. Ltd., Velho  
Bldg., Panaji, Goa 403 001. ...Petitioners.

VERSUS

1. Development Commissioner, Seepz Special Economic Zone, Government of India, Ministry of Commerce & Industry, Andheri (E), Mumbai -96.
2. The Appellate Committee, Ministry of Commerce & Industry, Government of India, Department of Commerce, Udyog Bhawan, New Delhi -110 117 ...Respondents.

Mr. P. Sawant, Advocate for the petitioners.

Mr. R. Chodankar, Central Government Standing Counsel for the respondent no.1.

**CORAM: BHARAT P. DESHPANDE, &  
VALMIKI SA MENEZES, JJ.**

**DATE: 5TH JANUARY 2024.**

**ORAL JUDGMENT : (Per BHARAT P. DESHPANDE,J)**

1. Heard Mr P. Sawant, learned counsel for the petitioner and Mr R. Chodankar, learned Standing Counsel for the respondents.
2. On 5.10.2011, Rule was issued in this matter.

3. The challenge in the present petition is to the impugned orders dated 14.3.2008, 20.7.2009 and 17.2.2010 passed by concerned authorities thereby rejecting the contentions of the petitioner.

4. Mr Sawant, learned counsel mainly raised the aspect of the ground which is found at ground (g) at page 22 of the petition. He would submit that the impugned order dated 14.3.2008 is in breach of settled principles of law, that the authority who hears the case has to decide the same. He submits that show cause notice was issued on 22.3.2004 by Assistant Development Commissioner, personal hearing was given to the petitioner by the Joint Development Commissioner on 14.5.2007. However, impugned order was passed on 14.3.2008 by the Development Commissioner thereby imposing a penalty of Rs.1,00,000/-.

5. Mr Sawant submits that the petitioner filed an appeal on 23.4.2008 before the Appellate Board and thereafter a review on 14.8.2009. Appeal as well as review are rejected by the competent authorities.

6. Mr Sawant placed reliance in the case of **Gullapalli Nageswara Rao and others Vs Andhra Pradesh State**

***Board Transport Corporation and another, 1959 AIR (SC)***

***308.***

7. Mr Chodankar, appearing for the respondent no.1 is candid enough in submitting that the authority who passed the impugned order did not hear the petitioner and authority who heard the petitioner did not pass the impugned order.

8. Impugned order dated 14.3.2008 is admittedly passed by Development Commissioner which is clear from the copy placed on record. The show cause notice was given by Assistant Development Commissioner on 22.3.2008 wherein hearing was before the Joint Development Commissioner which is a unique matter wherein show cause notice is issued by authority as Assistant Development Commissioner wherein hearing was given by the Joint Development Commissioner and order is passed by Development Commissioner. Such procedure adopted by concerned authority is clearly against the principles of natural justice and as considered by the Supreme Court in the case of ***Gullapalli Nageswara Rao and others*** (supra) specifically in paragraph no.45 which reads thus:-

45. *The second objection is that while the Act and the Rules framed thereunder impose a duty on the State Government to give a*

*personal hearing, the procedure prescribed by the Rules impose a duty on the Secretary to hear and the Chief Minister to decide. This divided responsibility is destructive of the concept of judicial hearing. Such a procedure defeats the object of personal hearing. Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear-up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.*

9. The impugned orders are therefore directly in the teeth of the observations of the Apex Court and therefore, such orders cannot be sustained and it is clear that the personal hearing was only an empty formality. Development Commissioner did not hear the petitioner, and, therefore, order passed by him is without giving an effective hearing to the petitioner. On this ground alone, we deem it

appropriate to quash and set aside the impugned orders with a direction to hear the petitioner a fresh by competent authority under Foreign Trade (Development & Regulation) Act, 1992

**10.** Hearing shall be given within a period of one month from the date of placing the copy of this order before the competent authority. Competent authority shall thereafter decide the matter within a period of one month from the date of hearing. All contentions of all the parties are kept open.

**11.** Rule is made absolute in the above terms.

**12.** Petition stands disposed of.

**13.** Parties shall act on the duly authenticated copy of this Order.

**VALMIKI SA MENEZES, J**

**BHARAT P. DESHPANDE, J**

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