

Court No. - 46 Neutral Citation No. - 2023:AHC:198478-DB

Case :- WRIT TAX No. - 1181 of 2023

Petitioner :- M/S Gaurav Enterprizes

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Niraj Kumar Singh, Ashish Bansal

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Aftab Husain Rizvi, J.

Petitioner is aggrieved by the order, dated 04.02.2023, whereby liability has been raised for deposit of GST under Section 74 of The Goods and Services Tax Act. The order impugned in the petition has been passed pursuant to the show cause notice issued under Section 74 of GST Act, on 09.10.2022. This notice contains a stipulation, 'NA' in the place of date of hearing which is required to be specified in the show cause notice .

Submission is that no opportunity of hearing otherwise has been given in the matter, as such the impugned order can not be sustained.

Learned counsel has placed reliance upon an order passed, by this Court, in Writ Tax No.551 of 2023 (M/S Mohini Traders Versus State of U.P. and another), whereby the petition was allowed by the following order, dated 03.05.2023:

"1. Heard Sri Vishwjit, learned counsel for the assessee and Sri Ankur Agarwal, learned counsel for the revenue.

2. Challenge has been raised to the order dated 21.10.2022 passed by the Assistant Commissioner, State Tax, Sector-6, Aligarh for the tax period April 2018, whereby demand in excess to Rs. 5 crores has been raised against the present petitioner.

3. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 20.05.2022 seeking his reply within 30 days. Referring to item no. 3 of the table appended to that notice, it has been pointed out, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the petitioner by mentioning "NA" against column description "Date of personal hearing". Similar

endorsements were made against the columns for "Time of personal hearing" and "Venue where personal hearing will be held". Thus, it is the objection of learned counsel for the petitioner, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.

4. *Relying on Section 75(4) of the U.P. GST Act, 2017 (hereinafter referred to as the 'Act') as interpreted by a coordinate bench of this Court in **Bharat Mint & Allied Chemicals Vs. Commissioner Commercial Tax & 2 Ors., (2022) 48 VLJ 325**, it has been then asserted, the Assessing Authority was bound to afford opportunity of personal hearing to the petitioner before he may have passed an adverse assessment order. Insofar as the assessment order has raised disputed demand of tax about Rs. 6 crores, the same is wholly adverse to the petitioner. In absence of opportunity of hearing afforded, the same is contrary to the law declared by this Court in **Bharat Mint & Allied Chemicals (supra)**. Reliance has also been placed on a decision of the Gujarat High Court in **M/S Hitech Sweet Water Technologies Pvt. Ltd. Vs. State of Gujarat, 2022 UPTC (Vol. 112) 1760**.*

5. *On the other hand, learned counsel for the revenue would contend, the petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing (in the reply to the show-cause-notice), submitted through online mode. Having thus declined the opportunity of hearing, the petitioner cannot turn around to claim any error in the impugned order passed consequently.*

6. *Having hearing learned counsel for the parties and having perused the record, Section 75(4) of the Act reads as under :*

"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."

7. *We find ourselves in complete agreement with the view taken by the coordinate bench in **Bharat Mint & Allied Chemicals (supra)**. Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.*

8. *Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Here, we note, the impugned order itself has been passed on 25.11.2022, while reply to the show-cause-notice had been entertained on 14.11.2022. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.*

9. *Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.*

10. *Accordingly, the present writ petition is allowed. The impugned order dated 25.11.2022 is set aside. The matter is remitted to the respondent no.2/Assistant Commissioner, State Tax, Sector-6, Aligarh to issue a fresh notice to the petitioner within a period of two weeks from today. The petitioner undertakes to appear before that authority on the next date fixed such that proceedings may be concluded, as expeditiously as possible.*

Order Date :- 3.5.2023"

Submission is that facts being identical, this petition be disposed off on same terms.

Learned counsel appearing for the Department does not dispute the assertion that issues raised in this writ petition are squarely covered by the adjudication made in Writ Tax No.551 of 2023.

In that view of the matter and for the reasons noticed above, this petition is also disposed of in terms of the order passed in Writ Tax No.551 of 2023. The authorities shall be at liberty to issue a fresh notice specifying the date of hearing and proceed in accordance with law. The order impugned in the writ petition dated 04.02.2023 stands quashed in order to facilitate the department to proceed, afresh.

Order Date :- 13.10.2023

MN/-