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GST Digest

- Recent case laws and
Notifications

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NEWS
FEED

- Antennas manufactured by taxpayer in Telangana are to be installed at various locations in different States for which scope of job amounted to rendering of service requiring determination of place of supply of services, being not covered in list on which ruling could not be sought in section 97(2), application for advance ruling was to be rejected-Telangana AAR
- Writ petition was entertainable when questions involve facts and appellate remedy is available; High Court finds non-availment of hearing opportunity by petitioner and directs filing of appeal before appellate authority-Madras HC
- Writ petition could not be entertained when appeal was pending before Appellate Authority: Jammu and Kashmir and Ladakh HC
- Detained goods to be released on condition of paying certain amount of penalty and furnishing bank guarantee-Gujarat HC



- ICICI Prudential for gets a GST demand notice for Rs 492 Crore HDFC Life Insurance also received a demand notice for Rs 942 crore.
- Odisha Chief Minister has once again requested the GST Council to withdraw goods and services tax on Kendu (Tendu leaves).
- The Hon'ble Supreme Court in Makhijani Pushpak Harish v. The State of Gujarat [SLP (CRL.) No. 2868 of 2023 dated April 19, 2023] set aside the order passed by the Superintendent which was modified by the Hon'ble Gujarat High Court directing the assessee to furnish bank guarantee for bail.
- Delhi govt sets up GST registration cell to boost revenue collection.
- HC stayed recovery of refund of IGST already paid since validity of Rule 96(10) of CGST Rules is under challenge-Gujarat HC
- Writ petition against adjudication order to be dismissed as assessee not cooperated in assessment proceedings: Madras HC
- New online compliance pertaining to Liability/Difference appearing in GSTR-1 and GSTR-3B: GSTN Advisory Dated 29.06.2023
- Objection on non-issue of DRC-01A was hypertechnical when entire tax amount was disputed by petitioner: Allahabad HC
- HC set aside order rejecting refund claim of petitioner since application was accompanied by prescribed documents-Delhi HC
- Refund was not to be rejected on ground of delay during COVID period in view of extended limitation period: Allahabad HC

1. High Court of Allahabad in the case of Mohini Traders Vs State of UP[WRIT TAX NO. 551 OF 2023 Dated 03.05.2023]

Notice in the proceedings was issued to the petitioner on 20.05.2022 seeking his reply within 30 days.

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.

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 v. Commissioner Commercial Tax & 2 Ors.*, [2022] 48 V LJ 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.

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."

The Court is 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.

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.

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.

Accordingly, the present writ petition is allowed.

2. High Court of Allahabad in the case of Swati Poly Industries (P.) Ltd v State of U.P.[WRIT TAX NOS. 405 & 408 OF 2023 Dated 10.04.2023]

The contention of the counsel for the petitioner is that a show cause notice was issued to the petitioner on 30.11.2019 (Annexure No. 5), wherein a date was fixed for the petitioner to file his reply to the show cause notice, no date for hearing was fixed.

It appears that the petitioner did not file a reply to the show cause notice, as such, a reminder no. 2 was served upon the petitioner calling upon the petitioner to file a reply. Once again no date for personal hearing was fixed in the said communication.

It is argued that the petitioner did not file a reply on account of Covid situation and on account of the accountant being unwell. As such, an order came to be passed against

the petitioner on 01.10.2020 (Annexure No. 2), whereby the demand was quantified against the petitioner under Section 74 of the U.P. GST Act. The petitioner preferred an appeal against the said order which according to the petitioner was passed without giving opportunity of hearing. As the amount which is required to be deposited for consideration of the appeal, could not be deposited by the petitioner on account of poor financial conditions, the appeal came to be dismissed by means of an order.

The neat consideration of the counsel for the petitioner is that the proceedings were initiated under Section 74 against the petitioner, the manner of decision making is specified under Sub-Section (4) of Section 75 of the U.P. GST Act, which specifically provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax for penalty or where an adverse decision is contemplated against such person.

Learned Standing Counsel placed upon instruction has produced the ordersheet which led to passing of the order dated 01.10.2020.

The said instructions and the ordersheet do not reveal that any order fixing date for hearing was ever served upon the petitioner. The order itself indicates that two dates were fixed for filing reply as are clear from the perusal of Annexure 6 to the petition. Both the said notices did not fix any date for personal hearing which is a

mandatory condition in terms of Section 75(4) of the U.P. GST Act.

The order dated 01.10.2020 also does not reveal that any personal hearing was accorded to the petitioner prior to passing of the order, as such, the inescapable conclusion from the material available on record is that petitioner was not granted personal hearing which is required and is mandatory under Section 75(4), as such, on that ground alone the order dated 01.10.2020 is quashed. The respondents shall be at liberty to conclude the proceedings in accordance with law afresh, if so advised.