

Court No. - 39

Case :- WRIT TAX No. - 144 of 2024

Petitioner :- Ms Atlas Cycles Haryana Ltd

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Manjive Shukla,J.

1. Having heard Mr. Shubham Agrawal, learned counsel for the petitioner and Mr. Ankur Agrawal, learned Standing Counsel for the revenue, we find, section 75 (4) of the U.P. G.S.T. Act, 2017 mandates opportunity of personal hearing be granted before any adverse decision is taken against any person, here a registered person/petitioner.

2. Undeniably, the first notice issued to the petitioner under Section 73 of the Act dated 29.09.2023 did intend to call for a reply from the petitioner but did not propose to grant personal hearing as the abbreviation "NA" was specified against the column "date of personal hearing". Similar narration appears in the further notice issued to the petitioner dated 28.11.2023. In that against the columns to specify the date of personal hearing, time of personal hearing and venue for personal hearing, the abbreviation "NA" i.e. Not Applicable were recorded.

3. In view of the above position admitted on the record, the only conclusion possible to be drawn is that the petitioner was never afforded any opportunity of personal hearing.

4. Thus, upon service of notice the petitioner had been called to

file its reply only. Non compliance of that show cause notice may have only led to closure of opportunity to submit written reply. However by virtue of the express provision of Section 75 of the Act, even in that situation the petitioner did not lose its right to participate in the oral hearing and establish at that stage itself that the adverse conclusions proposed to be drawn against the petitioner, may be dropped.

5. In other words, the rules of natural justice as are ingrained in the statute prescribe dual requirement. First with respect to submission of written reply and the second with respect to oral hearing. Failure to avail one opportunity may not lead to denial of the other. The two tests have to be satisfied independently.

6. On merits, learned counsel for the petitioner further states that detailed reply was not required. The discrepancies in the returns as noticed by the adjudicating authority would have been clarified if opportunity of personal hearing had been granted.

7. In that regard, it has also been stated that the petitioner's business operations are lying closed since 2020. Therefore, for reasons of disruption of business operation, petitioner committed a mistake in not responding the notice, within time.

8. In view of the above noted facts and reasons, we find no useful purpose may be served in keeping this petition pending or calling counter affidavit at this stage or to relegate the present petitioner to the forum of alternative remedy. The order impugned has been passed contrary to the mandatory procedure. The deficiency of procedure is self apparent and critical to the out come of the proceedings.

9. Accordingly the impugned order dated 17.12.2023 is set aside, matter is remitted to the respondent No. 2 to pass a fresh order. In that regard the petitioner may file its final reply to the show cause notice within two weeks from today. Thereafter, the petitioner may appear before the assessing authority on 11.03.2024, whereafter the assessing authority may pass appropriate reasoned order.

10. Accordingly, the writ petition is **allowed**.

Order Date :- 12.2.2024

Gaurav

(Manjive Shukla, J.) (S.D. Singh, J.)