

Court No. - 39

Case :- WRIT TAX No. - 971 of 2024

Petitioner :- M/S Jain Medicals

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner-assessee and Sri Ankur Agarwal, learned counsel for the revenue.
2. Pursuant to the earlier order, Sri Ankur Agarwal, learned counsel for the revenue has received written instructions. In absence of any dispute as to fact, the matter has been proceeded with the consent of parties at the fresh stage itself.
3. Challenge has been raised to the order dated 5.12.2023 passed by the Assistant Commissioner, State Tax, Sector - 2, Pratapgarh, Prayagraj for the tax period 2017-18, whereby demand in excess of Rs. 60,383.00/- has been raised against the present petitioner.
4. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 2.9.2023 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.
5. 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. 13,11,779/- , 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.

6. 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.

7. 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."

8. 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.

9. 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 05.12.2023, while reply to the show-cause-notice had been entertained on 13.10.2023. 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.

10. 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.

11. Accordingly, the present writ petition is **disposed of**. The impugned order dated 05.12.2023 is **set aside**. The matter is remitted to the respondent no.2/Assistant Commissioner, State Tax, Sector - 2, Pratapgarh, Prayagraj 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 :- 1.7.2024

CS/-

(Anish Kumar Gupta, J.) (S.D. Singh, J.)

