

Court No. - 39

Case :- WRIT TAX No. - 1518 of 2022

Petitioner :- M/S Paras Industrial Sales Through Its Proprietor

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ashish Agrawal, Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Vipin Chandra Dixit, J.

Heard Sri Shubham Agrawal, learned counsel for the petitioner and Sri Ankur Agrawal, learned counsel appearing for the respondent revenue.

This petition is directed against the assessment order dated 06.09.2022 as rectified on 13.9.2022 (Anneuxre-4) passed by respondent no.2 under Section 74 of C.G.S.T-U.P.G.S.T. Act, 2017 (hereinafter referred to as 'Act, 2017'). The only issue for consideration has been raised by the learned counsel for the petitioner is that on receipt of the show cause notice dated 17.12.2021 issued by respondent no.2, a reply dated 23.12.2021 was submitted by the petitioner and in the documents uploaded in Form GST DRC 06, the petitioner opted for personal hearing by tick marking the relevant column. The copy of said reply in the requisite form has been appended at page '40' of the paper book. However, the date, time and venue of the personal hearing was not intimated to the petitioner before passing the order impugned.

On the said issue by the order dated 6.12.2022, the instruction was sought from the respondent no.2 to answer as to why no personal hearing was accorded to the petitioner before passing order impugned despite the request made on 23.12.2021. In the written instructions supplied to us, it is sought to be submitted that notice dated 17.12.2021 was a reminder notice and no further opportunity for personal hearing was required to be granted to the petitioner as he did not submit any reply to the previous notice issued on 27.8.2020.

In rebuttal, learned counsel for the petitioner has placed reliance on the decision of the Division Bench of this Court reported in **2022 U.P.T.C. (Vol. 111)(719) Bharat Mint And Allied Chemicals Vs. Commissioner Commercial Tax and 2 others**, wherein the question whether opportunity of personal hearing is mandatory or not under Section 75(4) of the Act, 2017 has been answered.

From perusal of Section 75(4) of the Act, 2017, it is evident that opportunity of hearing has to be granted by the authority under the said Act where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against a person even he need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing any order adverse to such person. In view of the legislative mandate, in case of non-affording of opportunity of hearing by the assessee by intimating him the date, time and venue for personal hearing, the assessment order was found to be in violation of the principles of natural justice. It was, thus, held therein that the alternative remedy of appeal under Section 107 of the Act cannot be said to be a bar to entertain the writ petition under Article 226 of the Constitution of India. The exception carved out to entertain the writ petition under Article 226 of the Constitution of India even in the event of the alternative remedy, in case of gross violation of principles of natural justice was considered therein.

In the instant case, the notice dated 17.12.2021 indicates that it was issued with reference to the previous notice dated 27.8.2020 as a reminder with the assertion that the petitioner did not file any reply nor had appeared on the date mentioned in the said notice to explain the reason for the charges mentioned therein. However, by means of the notice dated 17.12.2021, the petitioner was requested to furnish

the reply by the date mentioned in the table, given in the said notice. It was also stated therein that:-

"You may appear before the undersigned for personnel hearing either in person or through authorized representative for representing your case on the date, time and venue, if mentioned in table below.

You are also requested to bring documents mentioned in the attached annexure, if any, relating to case on the date of hearing and other information called therein.

Sr. No.	Description	Particulars
1	Date by which reply has to be submitted	24/12/2021
2	Date of Personal Hearing	NA
3	Time of Personal Hearing	NA
4	Venue where Personal Hearing will be held	NA

However, in the description given in the table above in the column of date, time and venue for personal hearing 'NA' was mentioned. It is, thus, clear that though by the notice dated 17.12.2021 the petitioner was called upon to appear in person or through authorized representative to represent his case on the date, time and venue, if mentioned in the table above but no such date, time and venue was intimated to him and since it was 'NA', no opportunity of hearing had been given.

Even otherwise, while giving reply dated 23.12.2021 in Form GST DRC-06 the petitioner had opted for personal hearing, which admittedly had not been provided to the petitioner before passing the order impugned. We, thus, do not find any substance in the stand of the revenue that since the petitioner did not submit any reply to the first notice dated 27.8.2022, no further time should have been granted to him, moreover, when he submitted a reply dated 23.12.2021 opting for personal hearing.

The Article 226 of the Constitution of India confers discretionary power on the High Court, however, in case of

availability of alternative remedy, as self-restraint, not as a rule of law, the High Court could not entertain the writ petition and may relegate the person approaching it to avail the alternative remedy. However, there are certain exceptions to the rule of alternative remedy as settled by the Apex Court in a catena of decisions and one of them is in violation of principles of natural justice, which is prejudicial to the interest of the writ petitioner.

It is evident that the order of assessment dated 13.9.2022 was passed by the respondent no.2 under Section 74 of the Act, 2017 for the assessment year 2017-18 without affording opportunity of personal hearing as sought by petitioner. The act of the respondent no.2 in denial of the opportunity of personal hearing to the petitioner is in clear contravention of the statutory mandate under Section 75(4) of the Act, 2017. The element of principles of natural justice incorporated in the statutory provisions cast a mandate on the statutory authority to follow the procedure for finalization of its action. The assessment order dated 06.09.2022 as rectified on 13.9.2022 is, thus, found to be illegal being in contravention of provisions of Section 75(4) of the Act, 2017 and is hereby set-aside.

The matter is remitted back to the respondent no.2 to pass a fresh order strictly in accordance with law after affording opportunity of hearing to the petitioner herein. The petitioner is also directed to cooperate in the proceedings and remain present before the competent officer on the date, time and venue intimated to him.

Subject to the above observations, the writ petition is allowed.

No order as to costs.

Order Date :- 15.12.2022

Kpy