ALLAHABAD HIGH COURT

M/S SWASTIK TRADERS THRU. PARTNER MR. ANKUR AGARWAL VERSUS STATE OF U.P. THRU. PRIN. SECY. INSTITUTIONAL FINANACE & ORS

Misc. Bench No. - 19798 of 2019

Dated: - 22-7-2019

Judgment / Order

Anil Kumar And Saurabh Lavania JJ.

For the Petitioner : Himanshu Suryavanshi,Amithabh Agrawal

For the Respondent : C.S.C

ORDER

Heard Shri Amitabh Agarwal, learned counsel for the petitioner and learned Standing Counsel.

Facts in brief of the present case are that the petitioner is a registered dealer having GSTIN No.09ABYFS0479C1ZN under the relevant provisions of Goods and Services Tax Act, 2017 and deals in purchase and sale of Aluminium Section, Aluminium Sheets and their related hardware goods.

During the year 2017-18, one of the consignment of the sale made by the petitioner vide Tax Invoice No.GR-17-18/224 dated 16.12.2017 disclosing sale of Aluminium Section weighing 4013.16 Kgs. was being transported to the purchasing customer i.e. Maa Kripa Plywood & Hardware of Faizabad having GSTIN No.09AUXPM8745R1Z2 through Truck No.UP-70 DT/5611. The said truck was intercepted by Mobile Squad Officer vide Interception Memo No.13 dated 17.12.2017.

The Assistant Commissioner, State Tax, Mobile Squad Unit, Faizabad was not satisfied with the explanation made by the petitioner and goods as well as vehicle were seized under Section 129 (1) of the UPGST Act vide Seizure Memo No.14 dated 19.12.2017 merely on the ground that Tax Invoice discloses the sale of Aluminium Section only whereas Aluminium Section and Aluminium Composite Sheets were found in the vehicle in question.

Apart from seizing the goods and vehicle, Mobile Squad Officer issued a show cause notice being No.014 dated 19.12.2017 under Section 129 (3) of UPGST Act proposing to levy demand tax @ 18% on the total valuation of goods of ₹ 6,66,665/- i.e. amounting to ₹ 1,20,000/- and equivalent amount of penalty of ₹ 1,20,000/- (cumulatively ₹ 2,40,000/-) which was deposited by the petitioner by the Demand Draft.

The petitioner was not satisfied with the levy of demand of tax and penalty to the tune of ₹ 2,40,000/- as the relevant documents were duly produced at the time of interception of the vehicle by the Mobile Squad Officer. As such, the petitioner preferred First Appeal before the Additional Commissioner, Grade-II (Appeals) Ist, Commercial Tax, Ayodhya. By order dated 12.03.2019 served on 18.04.2019, the appeal was dismissed and the order dated 19.12.2017 passed under Section 129 (3) of the UPGST Act was upheld.

From the perusal of the record, the position which emerges is that the judgment and order dated 12.03.2019 has been passed without hearing to the petitioner, as such, the same is in violation of principles of natural justice.

Natural justice is an important concept in administrative law. In the words of Megarry J it is "justice that is simple and elementary, as distinct from justice that is complex, sophisticated and technical". The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.

Natural justice is another name for common-sense justice. Rules of natural justice are not codified cannone. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions "natural justice" and "Legal justice" do not present a watertight classification.

It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defense.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. There principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed. against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". the classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works the principles was thus stated:

> *"Even God himself did not pass sentence upon Adam before he was called upon to make his defense. 'Adam'(says God), 'where art thou? hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat ?"*

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

It is not possible to define precisely and scientifically the expression "natural justice". Though highly attractive and potential, it is a vague and ambiguous concept and, having been criticised as "sadly lacking in precision,

has been consigned more than once to the lumberroom.

It is a confused and unwarranted concept and encroaches on the field of ethics. Though eminent judges have at times used the phrase "the principles of natural justice", even now the concept differs widely in countries usually described as civilised.

It is true that the concept of natural justice is not very clear and therefore, it is not possible to define it; yet the principles of natural justice are accepted and enforced. In reply to the aforesaid criticism against natural justice, Lord Reid in the historical decision of Ridge V. Baldwin (1963) 2 All ER 66 (HL) observed:

> *"In Modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measured therefore it does not exist……"*

Further, Natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. They are embedded in our constitutional framework and their pristine glory and primacy cannot be allowed to be submerged by exigencies of particular situations or cases. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness.

The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. Its essence is good conscience in a given situation; nothing more-but nothing less.

As Lord Denning in the case of Kandaa v. Govt. of Malaya, 1962 AC 322 observed that *"if the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused person to know the case which is made against him. .He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them."*

Hon'ble the Apex Court in the case of ***Bishambhar Nath Kohli v. State of U.P., AIR 1955 SC 65*** held that *"in revision proceedings, the Custodian General accepted new evidence produced by one party, but no opportunity was given to the other side to meet with the same.*

The Supreme Court held that the principles of natural justice were violated."

For the foregoing reasons, writ petition is ***allowed*** and the impugned order dated 12.03.2019 passed by opposite party no.3 is set aside. The matter is remanded back to the Appellate Authority to decide the same within a period of eight weeks from the date of receiving a certified copy of this order. The petitioner shall not take any unnecessary adjournment before the Appellate Authority.