

SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA
REFERENCE NO- SKKA/106/2022

BASIC INFORMATION

IN THE MATTER OF	Bharat Mint And Allied Chemicals VS Commissioner Commercial Tax
NAME OF Authority	IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
Petition/Appeal No.	WRIT TAX 1029 OF 2021
Link to	
Date of Order	04-03-2022
Relevant Section/Rule	Section 74 & 75(4) of the CGST Act, 2017

FACTS IN BRIEF

The Petitioner has filed this petition challenging the assessment order passed by Commissioner of Commercial tax, who created a demand of tax, interest and penalty on petitioner for tax period 2019-20 without giving the petitioner a proper opportunity of hearing under section 75(4) of CGST Act,2017 thereby breaching the principle of natural justice. The respondent pleaded that the writ is not maintainable as petitioner had an alternative remedy of appeal under section 107 of CGST Act,2017 which reads as "Any person aggrieved by any decision or order passed under this Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person." Therefore the petitioner filed a writ praying the High Court to issue a writ commanding the revenue authorities to reconsider the case of petitioner lawfully and after affording due and proper opportunity of hearing.

JUDGEMENT/ORDER OF THE AUTHORITY

The Hon'ble HC while allowing the writ petition held as-

- It is compulsory to grant opportunity of hearing under section 75(4) of CGST Act,2017 where either a request is received from the person chargeable with tax or where any adverse decision is contemplated against such person.
- The stand of respondent that alternative remedy is not a complete bar to entertain a writ petition was rejected. The HC remarked that there are certain exceptions under which a writ shall be admitted in High court even though an alternative remedy is available. One of such exception is if some order is passed which violates the principle of natural justice. It also referred to various landmark rulings in this regard in the order.
- On going through the Show Cause Notice Issued by commissioner it was observed by HC that the date, time and venue of opportunity of hearing was not mentioned on the SCN. Therefore HC held that Respondent has not complied with section 75(4) of CGST Act,2017 and the order passed was against the principle of natural justice thereby quashing the order however with liberty to the respondents to pass an order afresh in accordance with law, after affording opportunity of personal hearing to the petitioner. A cost of Rs. 10,000/- was also imposed by the HC.

OUR COMMENTS

Section 74 of CGST Act,2017 empowers the proper officer to issue notice against a person where tax has not been paid/short paid/ITC has been wrongly availed or utilised by reason of fraud or any wilful suppression of facts. However, section 75(4) provides relief to such person that where a order for determination of tax is to be made, the proper office must afford a opportunity of hearing to such person. In the present case it has been seen that the order creating a demand for tax was passed without affording a oral hearing to the petitioner thereby arising question that the order was made in gross violation of principles of natural justice. One of the main constituent of natural justice is "Audi alteram partem maxim" which means that no person shall be condemned unheard and such person must be given a reasonable opportunity to defend himself. Thus violation of principles of natural justice results in arbitrariness which leads to violation of right to equality clause of Article 14 of COI. Thus department must provide opportunity of hearing as required under section 75(4) of the Act so that such person must basic have knowledge of material which may be going to be used against him in forming an order.