

SKKA IDT ALERT

19/2022 dt 27st June, 2022

WEEKLY UPDATES

KEY HIGHLIGHTS

1. The Central Board of Indirect Taxes and Customs (CBIC) through Instruction No.03/2022 dated 14th June 2022 has issued a detailed procedure for sanction, post-audit, and review of refund claims under Goods and Services tax, in the light of the receipt of reports of different practices being followed by the officers, creating confusion for taxpayers.
2. The Case Summary of *“Bharat Mint and Allied Chemicals vs Commissioner”* is very fruitful for assesses on the grounds not known to them i.e., opportunity of being heard is not given to them. The right to fair hearing is a guaranteed right not leading to violation of principles of natural justice.

INTRODUCTION

The GST entrance throughout the course of recent months has seen a few changes and updates. All the new updates are rolled out on a regular basis to help and assist the taxpayers in smooth and effective documentation of their GST returns.

Our Team at SKKA brings forth you weekly updates to ensure your business remains tax compliant.

A. GUIDELINES RELATING TO SANCTION, POST-AUDIT AND REVIEW OF REFUND CLAIMS

The GST Policy Wing of the CBIC has issued guidelines for the sanctioning of the refund claims, post-audit, and review of all refund claims exceeding ₹ 1.0 lakh within 3 months from the issue of the refund order.

Key takeaways from the Instruction 03/2022 dated 14 June 2022 –

- CBIC clarifies that while passing the refund sanction order, the sanctioning authorities shall be required to pass a detailed ‘speaking order’ providing reasons for sanction/rejection of the refund claim along with the specified details in Form GST RFD-06.
- Post audit of sanctioned refund for legality and propriety to be conducted only for refund claims exceeding ₹1.0 lakh
- Instruction issued to all field officers requires post audit to be concluded within 3 months from the date of issuance of refund and the findings of the post audit shall be communicated to the review branch for further action within 3 months.
- The review of the refund order shall be completed at least 30 days before the expiry of the period allowed for filing an appeal u/s 107(2) of CGST Act i.e., 6 months from the date of communication of the decision or the refund order.

B. JUDGEMENT WHEREIN COURT HAS UPHELD THAT VIOLATION OF PRINCIPLES OF NATURAL JUSTICE WOULD LEAD TO QUASHING OF ORDER

Bharat Mint and Allied Chemicals vs Commissioner Commercial Tax And 2 Others

Dated 4th March 2022

Name of Authority - Allahabad High Court

Petition No. - TS-269-HC(ALL)-2022-GST

Facts In Brief: Bharat Mint and Allied Chemicals (“the Petitioner”) has filed this petition challenging the assessment order dated November 09, 2021 (“the Impugned Order”) passed by the Commissioner Commercial Tax (“the Respondent”) creating demand of tax, interest, and penalty against the Petitioner. The Petitioner contended that the Impugned Order has been issued without giving an opportunity of being heard as per Section 75(4) of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) creating patently in breach of principles of natural justice and thus, the Impugned Order is unsustainable.

Judgement of the Authority: The Hon’ble Allahabad High Court quashed the order dated 9.11.21 under Section 75 of CGST Act 2017.

1) The High Court further observed; that where an adverse decision is contemplated, such a person need not even request for opportunity of personal hearing as it is mandatory for GST authority to afford an opportunity of personal hearing as per Section 75(4).

2) However, the copy of adjudication order shows that opportunity of hearing was not provided. Moreover, the availability of alternate remedy under Section 107 of CGST Act 2017, would not be a complete bar to entertain writ petition where there shall be a gross violation of principles of natural justice.

Comments for the Case: The concept of natural justice is one which is not a part of the Constitution of India but as the same itself suggests it has evolved over a period and courts of law has taken cognizance of the concept by laying down certain guidelines for the same. The above judgement is a pure case where principles of natural justice are violated. Opportunity of being heard is a right given to every citizen. One of the fundamental principles of Natural Justice is the "Rule of Audi alteram Partem" which means hear the other side or that no man shall be condemned unheard. Assessment order cannot be issued without giving an opportunity of being heard and is against the principles of natural justice.

SKKA COMMENTS:

With provision of online compliances and payments, the framework of GST has become more accountable. The one nation, one tax system aims to improve India’s competitiveness in global markets. GST law though a new law has already seen several litigations on the process part of the law wherein the departmental officers have passed orders confirming tax demand, rejecting refund claims, cancelling registrations, all without following the due process of law and thereby leading to violation of principles of natural justice. Being GST-compliant, organizations can experience the merits of having a unified tax system and easy input credits. Notwithstanding compliance challenges, it's clear that noncompliance is vastly more expensive and far riskier to an organization.



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