

Assessment Proceedings without proper intimation is bad in law

The Hon'ble Allahabad High Court in the case of ***Eastern Machine Bricks & Tiles Industries v. State of UP [Writ Tax No. 1507 of 2023 dated January 8, 2024]*** relying upon the principle of "*Audi Alteram Partem*" (let the other side be heard as well) allowed the writ petition and set aside the Impugned orders thereby holding that, any action that proceeds without the intimation and service of the Show Cause Notice to the Assessee is vitiated and bad in law.

Facts:

Eastern Machine Bricks & Tiles Industries ("**the Petitioner**") filed a writ petition before the Hon'ble High Court against the Adjudicatory Order dated September 14, 2021, and Appellate Order dated October 5, 2023 ("**the Impugned Orders**") passed by the Revenue Department ("**the Respondent**") contending that, the Notice under Section 74 of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**"), was given to the Petitioner only by way of uploading the aforesaid Notice on portal. It is further contended that, the Petitioner was not required to check the web portal as the GST registration was cancelled voluntarily before the issuance of aforesaid notice.

Issue:

Whether Assessment Proceedings are valid when no proper opportunity for hearing is granted to the Assessee?

Held:

The Hon'ble Allahabad High Court in the case of ***Writ Tax No. 1507 of 2023*** held as under:

- Relying upon the judgements of Hon'ble Supreme Court in the cases of *Mrs. Maneka Gandhi v. Union of India and Ors. [(1978) 1 SCC 248]*, *State of Kerala v. K.T. Shaduli Grocery Dealer Etc. [(1977) 2 SCC 777]*, *Madhyamam Broadcasting Limited v. Union of*

India and Ors. [Civil Appeal No. 8129 of 2022 dated April 05, 2023] and *State Bank of India v. Rajesh Agarwal and Ors. [Civil Appeal No. 7300 of 2022 dated March 27, 2023]* and enumerating upon the principle of Audi Alteram Partem noted that, the significance and applicability the principle is universal and is a part of doctrine of natural justice. The principle ensures that no one is condemned, penalised or deprived of their rights without a fair and reasonable opportunity of hearing. The principle also acts as a safeguard against arbitrary decision making, upholding the principle of due process while also providing a crucial foundation for just and equitable legal or administrative proceedings.

- Opined that, in the present case when the Petitioner had cancelled its registration, the proper notice was required to be issued at its address. However, the notice was uploaded merely on the web portal which prevented the Petitioner from appearing in the original proceeding.
- Further Opined that, any action that proceeds without proper intimation and service of the Show Cause Notice to the Petitioner is vitiated and bad in law and is, accordingly required to be quashed and set aside.
- Held that, the Impugned Orders are set aside. Hence, the writ petition is allowed.
- Directed that, the Respondent shall grant the Petitioner an opportunity of hearing and pass reasoned order accordingly along with supply of copies relied upon.

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