

Assessment order cannot be issued without giving an opportunity of being heard and is against the principles of natural justice

The Hon'ble Allahabad High Court in *Bharat Mint and Allied Chemicals v. Commissioner Commercial Tax & Ors. [Writ Tax No. - 1029 of 2021 dated February 04, 2022]* held that the Revenue Department cannot issue assessment orders without giving the assessee an opportunity of being heard and is against the principles of natural justice. Further, remanded back the matter to be heard as a fresh case.

Facts:

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.

The Respondent has prayed for a week's time for filing a counter affidavit and specifically disclosing as to whether opportunity of hearing was afforded to the Petitioner as contemplated in Section 75(4) of the CGST Act.

Issue:

Whether the Respondent violated the principles of natural justice while passing the Impugned Order without giving the Petitioner an opportunity of being heard?

Held:

- Observed that, in the Show Cause Notice (“SCN”) issued to the Petitioner did not mention lines, date, time and venue of personal hearing.
- Analysed Section 75(4) of the CGST Act and stated that, opportunity of hearing has to be granted by authorities, 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.
- Opined that, where an adverse decision is contemplated against the Petitioner, in such a case the Petitioner need not to request for opportunity of hearing and it appears to be mandatory for the authority concerned to afford opportunity of hearing before passing an order adverse to such person.
- Held that, the Respondent has not complied with Section 75(4) of the CGST Act, and the Impugned Order passed is against the principle of natural justice.
- Remanded back the matter to the appropriate Authority to be heard as a fresh case on February 02, 2022.
- Directed the Respondent that, no coercive action shall be taken against the Petitioner pursuant to the demand created under the Impugned Order till the next date fixed.

Relevant Provisions:

Section 75(4) of the CGST Act

“General provisions relating to determination of tax.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”

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