

**Not providing an opportunity of being heard before passing an order is violative of principle of natural justice**

The Hon'ble Jammu & Kashmir High Court in ***Navneet R. Jhanwar v. State Tax Officer and Ors. [WP (C) No. 443/2021, dated March 17, 2021]*** quashed the refund rejection order passed by the Revenue Authority rejecting the claim for refund without giving an opportunity of being heard and remanded back the matter for passing an order afresh after putting proper show cause notice and affording a reasonable opportunity of being heard. Held that, grounds on which the refund rejection order passed were not proposed in the show cause notice nor the opportunity of personal hearing was provided to the assessee. Thus, it is a clear case of violation of principle of natural justice and proviso to Rule 92(3) of the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**").

**Facts:**

Navneet R. Jhanwar ("**the Petitioner**") having become entitled for refund of excess tax paid in terms of Section 54 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**") submitted a refund application in FORM-GST-RFD-01 before the State Tax Officer ("**the Respondent**"), wherein the Respondent instead of directing the refund issued a Show Cause Notice ("**SCN**") calling upon the Petitioner to show cause as to why the refund claim should not be rejected for the reason that the claim for refund is belated having been filed after the expiry of two years from the relevant date, as per explanation 2 in Section 54 of the CGST Act and that in the instant case the period had expired in April, 2020.

Subsequently the reply to SCN was filed by the Petitioner explaining the delay. Relied upon ***Notification No.35/2020-Central Tax, dated April 3, 2020*** and ***Notification No.55/2020-Central Tax, dated June 27, 2020***, whereby on account of lockdown due outbreak of corona virus pandemic, time limit/due date for various compliances was extended upto August 31, 2020. The explanation on delay by the Petitioner was accepted and accordingly, the refund application of the Petitioner was processed.

However, the Respondent without serving further SCN upon the Petitioner, passed the refund rejection order dated December 2, 2020 ("**Refund rejection order**") on the grounds that were not proposed in the SCN and no opportunity of hearing was provided regarding the same.

Being aggrieved by Refund rejection order, the Petitioner has filed this petition.

**Issue:**

Whether the Refund rejection order can be passed without giving an opportunity of being heard?

**Held:**

The Hon'ble Jammu & Kashmir High Court in **WP (C) No. 443/2021, dated March 17, 2021** held as under:

- Stated that alternative remedy is not a complete bar to the entertaining of writ petition filed for enforcement of any of the fundamental rights or where there has been a violation of principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of statute are under challenge.
- Agreed with the contention of the Petitioner and stated that, the Refund rejection order is not in conformity with the proposal made in the SCN that was served upon the Petitioner when the adjudicating authority found it barred by limitation. The grounds on which the Refund rejection order has been passed were never proposed in the SCN nor was the Petitioner ever given any opportunity to explain his position. Thus, it is a clear case of violation of principle of natural justice and of proviso to Rule 92(3) of the CGST Rules.
- Relied on the decision of the Hon'ble Madras High Court in **R. Ramadas v. Joint Commissioner of C. Ex., Puducherry, [W.P.No.14825 of 2016 And WMP.Nos.12961 & 12962 of 2016, dated October 29, 2020]** wherein it was held that, the very purpose of the SCN issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned authority is required to address such objections raised. This is the basis of the fundamental principles of natural justice. In cases where the consequential demand traverses beyond the scope of the SCN, it would be deemed that no SCN has been given for that particular demand for which a proposal has not been made.
- Held that, the instant case is fully covered by the above judgment of the Hon'ble Madras High Court, which, the Court found has very succinctly enunciated the law on the point.

- Quashed the Refund rejection order passed by the Respondent and remanded back the case for passing order afresh after putting the Petitioner to proper SCN and after affording him a reasonable opportunity of being heard.

**Relevant Provisions:**

**Rule 92(3) of the CGST Rules:**

*“(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:*

*Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.”*

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