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## Opportunity of being heard shall be given before passing of any order by the GST Authority

The Hon'ble High Court of Gujarat in ***Alkem Laboratories Ltd. v. Union of India [R/Special Civil Application No. 994 of 2021, decided on February 4, 2021]*** quashed and set aside the order imposing liability of Service tax along with interest & penalty and order in Form GST DRC-16 by the Assistant Commissioner for attachment of factory premises on the ground that no opportunity of personal hearing was given and held that one opportunity shall be given to appear and to defend the case.

### Facts:

This writ application filed by Alkem Laboratories Ltd. ("**the Applicant**") seeks to challenge the validity of the recovery notice issued by the Assistant Commissioner of State Tax (Enforcement) ("**the Respondent**") and order passed in Form GST DRC-16 dated December 17, 2020, inter alia, attaching the factory premise of the Applicant under Section 79 of the Central Goods and Services Tax Act, 2017 ("**CGST Act**").

The order of attachment dated December 17, 2020, appeared to be the consequences of the order dated October 21, 2020 ("**Impugned order**") uploaded on the GST Portal, by which, the liability of the Applicant to pay a particular amount towards Service tax along with interest and penalty whereas no opportunity of personal hearing was given to the Applicant by the concerned authority before passing the Impugned order.

### Issue:

Whether the Impugned order and the order of attachment dated December 17, 2020 should be quashed on the ground that it is violation of the principles of natural justice and no opportunity of hearing was given to the Applicant?

### Held:

The Hon'ble High Court of Gujarat in ***R/Special Civil Application No. 994 of 2021, decided on February 4, 2021*** held as under:

- Analyzed the provisions of Section 78 of the CGST Act, and observed that no recovery proceedings can be initiated against the assessee before the expiry of three months

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from the date of the service of the order. It is not in dispute that in the case on hand, within one month, the proceedings came to be initiated in the form of attachment of the factory premises.

- Further observed that, the Applicant has filed the replies to the different notices issued by the Respondent and that no opportunity of personal hearing was given to the Applicant by the concerned authority before passing the Impugned order.
- Stated that, although the Court should have declined to entertain this writ application as the Impugned order is an appealable order, but the Court thought fit to entertain this writ application, as no opportunity of being heard was given.
- Noted that, Section 75(4) of the CGST Act, makes it abundantly clear that an opportunity of hearing has to be given, more particularly, in those cases where a request is received in writing from the person chargeable with tax or penalty and where no adverse decision is contemplated against such person.
- Quashed and set aside the, Impugned order and the order of attachment dated December 17, 2020.
- Remitted the matter to the Respondent for fresh consideration. Further, directed Respondent to issue a notice to the Applicant, for fixing a particular date for hearing and submission, and thereafter, proceed to pass the final order in accordance with law.

## **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”*

### **Section 78 of the CGST Act:**

*“Initiation of recovery proceedings-*

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*Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated;*

*Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him."*

## **Section 79(1)(d) of the CGST Act:**

*"79. Recovery of tax.*

*(1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—*

*(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;"*

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