

Opportunity of hearing to be provided before passing of any order by the GST Authority

The Hon'ble Gujarat High Court in the matter of *M/s. Eagle Fibres Limited v. State of Gujarat [R/Special Civil Application No. 17506 of 2022 dated January 12, 2023]* quashed and set aside the Goods and Service Tax ("GST") demand order and all consequential proceedings, on the grounds that no opportunity of personal hearing has been provided to the assessee. Directed the Revenue Department to issue a physical notice to the assessee apart from uploading it on the GST Portal and provide reasonable opportunity to the assessee to defend the case.

Facts:

M/s. Eagles Fibres Limited ("the Petitioner") is engaged in the manufacturing of polyester yarn, who has filed this petition seeking direction to set aside the ex parte order passed in **Form GST DRC-07** dated April 14, 2022 ("the Impugned Order") by the Revenue Department ("the Respondent") without following the principles of natural justice.

The Respondent had issued a Show Cause Notice ("SCN") in **Form GST DRC-01** dated February 14, 2022 and the same was uploaded online on the GST portal of the Petitioner. The Petitioner was not served with the hard copy of the SCN. The Petitioner came to know about the SCN after 30 days and meanwhile before submitting the reply to the SCN, the Respondent passed the Impugned Order making an addition of tax, interest and penalty of about INR 2.40 crores.

The Petitioner contended that opportunity of personal hearing was not granted as required under Section 75(4) of the Central Goods and Services Tax Act, 2017 ("the CGST Act").

Issue:

Whether the Impugned Order without providing opportunity of personal hearing to the Petitioner is sustainable?

Held:

The Hon'ble Gujarat High Court held as under:

- Observed that, the personal hearing had not been granted and it is an ex-parte Impugned Order by making the addition of huge amount of tax, interest and penalty of Rs. 2.40 crores.
- Relied on its earlier judgments in ***Graziano Trasmissioni India Pvt. Ltd. vs. State of Gujarat [2022(66) G.S.T.L. 38 (Guj.)]*** and in ***Alkem Laboratories Ltd. v. Union of India [2021(46) G.S.T.L. 113 (Guj.)]*** wherein, the court quashed the order passed by the Revenue Department on the ground that no opportunity of personal hearing was given to the assessee and held that opportunity shall be given to the assessee to appear and to defend the case, when any adverse decision is being considered, even if the assessee has not requested personal hearing.
- Quashed and set aside the Impugned Order with all consequential proceedings.
- Permitted the Respondent to initiate proceeding from where it had been left after providing reasonable opportunity of hearing to the Petitioner.
- Directed the Respondent to serve notices physically to the Petitioner, afford reasonable opportunity to the Petitioner and pass orders in accordance with law.

Relevant Provisions:

Section 75(4) of the CGST Act:

“75. 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.”

(Author can be reached at info@a2ztaxcorp.com)

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