

**Case :- WRIT TAX No. - 1029 of 2021**

**Petitioner :- Bharat Mint And Allied Chemicals**

**Respondent :- Commissioner Commercial Tax And 2 Others**

**Counsel for Petitioner :- Abhinav Mehrotra, Satya Vrata Mehrotra**

**Counsel for Respondent :- C.S.C., A.S.G.I.**

**Hon'ble Surya Prakash Kesarwani, J.**

**Hon'ble Jayant Banerji, J.**

Heard Sri Abhinav Mehrotra, learned counsel for the petitioner and Sri B.P. Singh Kachhawaha, learned standing counsel for the respondent Nos.1 and 2.

This writ petition has been filed praying for the following relief:

*"1. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of CERTIORARI, calling for the Record of proceedings from Revenue and to thereafter be further pleased to set-aside and quash the IMPUGNED Order of Adjudication Dt. 09.11.2021 [ANNEXURE NO.7] and connected demand of tax which is made is gross violation of the principles of natural Justice; NO oral hearing in the matter was afforded to Petitioner, adverse material has not been confronted to Petitioner resulting in a most UNFAIR TRIAL.*

*2. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of CERTIORARI to set aside and quash the IMPUGNED Order of Adjudication Dt. 09.11.2021 which is made is gross disregard to Judicial Discipline and without meeting the mandate of Law as contained under Section 74(2) of the GST Act.*

*3. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of MANDAMUS commanding Revenue authorities to reconsider the case of the Petitioner, lawfully and in good-faith, in the light of submissions filed by Petitioner, and with supplying of relief upon documents and after affording due and proper opportunity of hearing."*

Learned counsel for the petitioner submits that the impugned assessment order creating demand of tax, interest and penalty, has been passed without affording opportunity of hearing contemplated in Section 75(4) of the Central Goods and Services Tax, 2017/ U.P. Goods and Services Tax, 2017 and thus, the impugned order being patently in breach of principles of natural justice, is unsustainable and deserves to be quashed.

We have perused the show cause notice dated 09.09.2021 in which it has been mentioned as under:

*"You may appear before the undersigned for personal hearing either in person or through representative for representing your case on the date, time and venue, if mentioned in the table below."*

In the table below aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) provides that 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.**

From perusal of Section 75(4) of the Act, it is evident that opportunity of hearing has to be granted by authorities under the Act 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. Thus, it *prima facie*, appears that where an adverse decision is contemplated against the person, such a person even 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.

From perusal of the impugned order, it, *prima facie*, appears that the provisions of Section 75(4) of the Act, have not been complied with. Section 75(4) is reiteration of principles of natural justice.

Learned standing counsel prays for and is granted a week's time to enable the respondents to file counter affidavit. In the counter affidavit, the respondents shall specifically disclose as to whether opportunity of hearing was afforded to the petitioner as contemplated in Section 75(4) of the Act and in the event, it has not been afforded, then the reasons therefor.

**Put up as a fresh case before the appropriate bench on 11.02.2022, along with records of Writ Tax No.1037 of 2021.**

Considering the facts and circumstances of the case as briefly noted above, as an interim measure, it is provided that no coercive action shall be taken against the petitioner pursuant to the demand created under the impugned order till the next date fixed.

**Order Date :- 4.2.2022**

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