**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

AFR
Neutral Citation No. - 2024:AHC:16674
**Court No. 1**

Present:

**The Hon'ble Justice Shekhar B. Saraf**

WRIT TAX No. – 1544 of 2022

M/S K.J. ENTERPRISES
v.
STATE OF U.P. AND OTHERS

**Counsel for Petitioner** : Pranjal Shukla, Advocate
**Counsel for Respondent** : Ravi Shanker Pandey, Additional Chief Standing Counsel

**Last heard on** : January 29, 2024
**Judgment on** : February 1, 2024

1. Heard counsel appearing on behalf of the parties.

2. This is a writ petition under Article 226 of the Constitution of India wherein the petitioner M/S K.J. Enterprises is aggrieved by the order dated September 26, 2022, passed by the Additional Commissioner, Grade – 2, (Appeals – 1st), Commercial Tax, Agra (hereinafter referred to as the 'Respondent No. 2').

3. Factual matrix of the instant case is provided below:

a. Petitioner is a proprietorship firm carrying the business of job work of scrap, selling, and purchasing of iron machinery parts and hardware.

b. The petitioner, during the month of March 2018, purchased inputs from different registered firms, in which ITC claim was made as per the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as the 'UPGST Act, 2017').

c. The petitioner also made transactions in the year 2019-20 and in this regard, bills were issued, in which details of the goods were mentioned.

d. On July 24, 2019, an inspection was carried out at the premises of the petitioner and at the time of inspection, the authorities asked the petitioner to deposit the amount in DRC – 03.

e. Thereafter, a summon was issued to the petitioner under Section 70 of the UPGST Act, 2017 directing the petitioner to appear before the concerned authority on August 13, 2019, at 11:00 am along with stock register and other relevant documents for verification.

f. A show cause notice was also issued by the respondents on July 22, 2020, under Section 74 of the UPGST Act, 2017 for tax period 2019-20, alleging that the petitioner wrongly availed input tax credit amounting to INR 22,00,00,000/- against bogus tax invoices and utilized the same by fraud or misstatement, suppression of facts, etc.

g. Another notice was issued on September 17, 2020, directing the petitioner to furnish a reply on October 6, 2020. Petitioner thereafter furnished reply on October 1, 2020.

h. Deputy Commissioner, State Tax, Sector – 4 (hereinafter referred to as the 'Respondent No. 3') rejected the reply of the petitioner vide order dated August 10, 2021, passed under Section 74 of the UPGST Act, 2017 for the A.Y. 2019-20 and imposed tax and penalty, along with interest, upon the petitioner amounting to INR 6,78,12,667.92/-.

i. The petitioner preferred an appeal before the Respondent No. 2 against the aforesaid order passed by the Respondent No. 3. By an order dated September 26, 2022, the Respondent No. 2 upheld the order of Respondent No. 3, and imposed tax and penalty on the petitioner.

4. Without delving into the merits of the instant case, it is crystal clear that an opportunity of 'personal hearing' was not afforded to the petitioner which is a mandatory requirement under Section 75(4) of the UPGST Act, 2017 which has been extracted below:

> *"75(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."*

**(emphasis added)**

5. Even if no request is received from the person chargeable with tax or penalty, an opportunity of personal hearing must be granted if any adverse decision is contemplated against such person.

6. When the word 'or' is used in a statute, it serves as a disjunctive conjunction, indicating two or more alternatives. Each option presented is to be considered independently. It is crucial to recognize that the disjunctive nature of "or" precludes its interpretation as a conjunctive conjunction, such as "and". Unlike, "and", which implies a requirement for the simultaneous fulfilment of multiple conditions, "or" allows for flexibility and choice by permitting compliance with any one of the alternatives presented. Attempting to read "or" as "and" in a statute would fundamentally alter its meaning and undermine the legislative intent behind its use. Such an interpretation would impose stricter criteria or conditions than intended by the statute, potentially leading to absurd or unreasonable outcomes.

7. Courts have consistently upheld the disjunctive nature of "or" in statutory interpretation, adhering to the principle of giving effect to the plain and ordinary meaning of the language used in the statutes. This principle, known as the plain meaning rule or the literal rule of interpretation, emphasizes the importance of interpreting statutes based on their plain and ordinary meaning, as understood by the average person reading the text of the statute. Moreover, the disjunctive function of "or" in statutes is essential for upholding principles of fairness, equity, and access to justice. By offering alternative paths or options, statutes accommodate diverse individual needs and situations, promoting inclusivity and mitigating potential disparities or injustices. This is particularly significant in areas of law concerning rights, benefits, and entitlements, where the flexibility provided by "or" ensures that legal provisions can be applied in a manner that reflects the realities and complexities of human experiences.

8. In ***Commissioner of Sales Tax, Uttar Pradesh -v- The Modi Sugar Mills Ltd.***, reported in, **MANU/SC/0276/1960**, the Supreme Court affirmed that while interpreting taxing statutes, courts must look at the words used in the statute, and interpret a taxing statute considering what has been clearly expressed:

> *"....In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

9. The significance of the word "or" in Section 75(4) of the UPGST Act, 2017 cannot be underestimated. The usage of the word "or" extends beyond its disjunctive function; it serves as a pivotal indicator of legislative intent regarding the necessity of providing an opportunity for personal hearing. By incorporating "or" into the statutory language, lawmakers explicitly delineate two distinct scenarios in which the opportunity of personal hearing must be afforded: either upon application by the individual subject to penalty or tax imposition, or in the event of contemplation of an adverse order. Personal hearing represents a fundamental aspect of procedural fairness and natural justice, ensuring that individuals have the opportunity to present their case, respond to allegations, and address any concerns or mitigating factors directly to the decision-maker. It is a vital safeguard against arbitrary or unjust decisions. The inclusion of "or" in Section 75(4) of the UPGST Act, 2017, emphasizes the dual nature of the obligation to provide a personal hearing, accommodating both proactive requests from individuals seeking to defend their interests and reactive responses to adverse orders contemplated by tax authorities. In either scenario, the statutory mandate remains clear: the individual must be afforded an opportunity for personal hearing before any final determination is made regarding tax or penalty imposition. Moreover, the statutory mandate for personal hearing reflects an acknowledgement of the complex and multifaceted nature of tax and penalty determinations, which often involve intricate legal and factual considerations. Personal hear-

ing provides a forum for nuanced discussion and exploration of these complexities, enabling decision-makers to make well-informed and equitable decisions based on a comprehensive understanding of the circumstances at hand.

10. A Division Bench of this Court in **Bharat Mint and Allied Chemicals v. Commissioner Commercial Tax and Others** reported in **2022 SCC OnLine All 1088**, underscored the significance of providing an opportunity for personal hearing as contemplated under Section 75(4) of the UPGST Act, 2017. Relevant paragraphs have been extracted below:

> *"9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 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, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.*
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> ***
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> *12. It has also been admitted in the counter affidavit that except permitting the petitioner to reply to the show cause notice, opportunity of personal hearing has not been afforded to the petitioner. Thus the legislative mandate of Section 75(4) of the Act to the authorities to afford opportunity of hearing to the assessee i.e. to follow principles of natural justice, has been completely violated by the respondents while passing the impugned order.*
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> *13. The stand taken by the respondents in the counter affidavit that the writ petition is not maintainable as the petitioner has an alternative remedy of appeal under Section 107 of the Act, can also not be accepted inasmuch as it is settled law that availability of alternative remedy is not a complete bar to entertain a writ petition under Section 226 of the Constitution of India. Certain exceptions have been carved out by Hon'ble Supreme Court that a writ petition under Article 226 of the Constitution of India may be entertained even there is an alternative remedy. One of the principle in this regard is that if the order impugned has been passed in gross violation*

> *of principles of natural justice. It is admitted case of the respondents that no opportunity of personal hearing, as contemplated under Section 75(4) of the Act, 2017, was afforded to the petitioner before passing the impugned order.*
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> *14. During the course of hearing of this writ petition, learned standing counsel has produced before us a photo stat copy of the order of the Assessing Authority relating to the impugned order and perusal thereof shows that no opportunity of hearing as contemplated under Section 75(4) of the Act, 2017 was not afforded to the petitioner. Thus, there being patent breach of principles of natural justice, the present writ petition is maintainable against the impugned order."*

11. The view taken in **Bharat Mint and Allied Chemicals (supra)** was reiterated by another Division Bench of this Court in **Mohini Traders v. State of U.P. and Others** reported in **MANU/UP/2440/2023**. Relevant paragraphs have been extracted below:

> *"7. We find ourselves in complete agreement with the view taken by the coordinate bench in Bharat Mint & Allied Chemicals (supra). Once it has been laid down by way of a principle of law that a person/assessee is not required to request for "opportunity of personal hearing" and it remained mandatory upon the Assessing Authority to afford such opportunity before passing an adverse order, the fact that the petitioner may have signified 'No' in the column meant to mark the assessee's choice to avail personal hearing, would bear no legal consequence.*
>
> *8. Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. Principle of natural justice would commend to this Court to bind the authorities to always ensure to provide such opportunity of hearing. It has to be ensured that such opportunity is granted in real terms. Here, we note, the impugned order itself has been passed on 25.11.2022, while reply to the show-cause-notice had been entertained on 14.11.2022. The stand of the assessee may remain unclear unless minimal opportunity of hearing is first granted. Only thereafter, the explanation furnished may be rejected and demand created.*
>
> *9. Not only such opportunity would ensure observance of rules of natural of justice but it would allow the authority to pass appropriate and reasoned order as may serve the in-*

> *terest of justice and allow a better appreciation to arise at the next/appeal stage, if required."*

12. Recently, in **M/s Primeone Work Force Pvt. Ltd. v. Union of India**, reported in **2024:AHC-LKO:3533-DB**, the Division Bench of this Court, stated that an opportunity of hearing is mandatorily required to be given if tax and penalty are to be imposed:

> *"6. Section 75(4) of the Act of 2017 specifically states 'or where any adverse decision is contemplated against such person'.*
>
> *7. Since in the present cases, both tax and penalty are imposed against the petitioners and admittedly, an adverse decision is contemplated against the petitioners, therefore, under Section 75(4) of the Act of 2017, an opportunity of hearing was mandatorily required to be given by the department to the petitioners and merely marking the same as "NO" in the option cannot entitle the department to pass an order without giving any opportunity or even without waiting for the petitioners to appear on the date fixed. This Court has already taken a similar view in M/s. Mohini Traders (supra).*
> *8. In view thereof, all the writ petitions are allowed on the sole ground of opportunity of hearing and the orders impugned in all four writ petitions are quashed."*

13. The Supreme Court in **Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise, Guhati and Others** reported in **(2015) 8 SCC 519**, upheld the importance of personal hearing before making any decision. The Supreme Court stated that even in administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking decision is necessary. Relevant paragraphs have been extracted below:

> *"33. In his separate opinion, concurring on this fundamental issue, K. Ramaswamy, J. echoed the aforesaid sentiments in the following words : (ECIL case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC p. 773, para 61)*
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> *"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well-settled law that the principles of natural justice are integral part of Article 14. No decision prejudicial to a party should be taken without affording an opportunity*

*or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post-mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice."*

*34. Likewise, in C.B. Gautam v. Union of India [(1993) 1 SCC 78] , this Court once again held that principle of natural justice was applicable even though it was not statutorily required. The Court took the view that even in the absence of statutory provision to this effect, the authority was liable to give notice to the affected parties while purchasing their properties under Section 269-UD of the Income Tax Act, 1961. It was further observed that : (SCC p. 104, para 30)*

*"30. ... The very fact that an imputation of tax evasion arises where an order for compulsory purchase is made and such an imputation casts a slur on the parties to the agreement to sell lead to the conclusion that before such an imputation can be made against the parties concerned, they must be given an opportunity to show cause that the undervaluation in the agreement for sale was not with a view to evade tax."*

*It is, therefore, all the more necessary that an opportunity of hearing is provided.*

*35. From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary. It was, thus, observed in A.K. Kraipak case [(1969) 2 SCC 262] that if the purpose of rules of natural justice is to prevent miscarriage of justice, one fails to see how these rules should not be made available to administrative inquiries. In Maneka Gandhi v. Union of India [(1978) 1 SCC 248] also the application of principle of natural justice was extended to the administrative action of the State and its authorities. It is, thus, clear that before taking an action, service of notice and giving of hearing to the noticee is required. In Maharashtra State Financial Corpn. v. Suvarna Board Mills [(1994) 5 SCC 566] , this aspect was explained in the following manner : (SCC p. 568, para 3)*

> *"3. It has been contended before us by the learned counsel for the appellant that principles of natural justice were satisfied before taking action under Section 29, assuming that it was necessary to do so. Let it be seen whether it was so. It is well settled that natural justice cannot be placed in a strait-jacket; its rules are not embodied and they do vary from case to case and from one fact-situation to another. All that has to be seen is that no adverse civil consequences are allowed to ensue before one is put on notice that the consequence would follow if he would not take care of the lapse, because of which the action as made known is contemplated. No particular form of notice is the demand of law. All will depend on facts and circumstances of the case."*

14. From a bare reading of the order dated August 10, 2021 passed by the Respondent No. 3 it is palpably clear that no opportunity of personal hearing was afforded by the Respondent No. 3 to the petitioner, which is a statutory obligation under Section 75(4) of the UPGST Act, 2017. Furthermore, the Respondent No. 2, while dismissing the appeal failed to correct this glaring impropriety in its order dated September 26, 2022. These orders cannot be allowed to pass through the legislative barriers of natural justice, erected to safeguard individual rights and prevent abuse of power.

15. In light of the aforesaid discussion, let there be a writ of certiorari issued against the order dated August 10, 2021 passed by the Respondent No. 3 and order dated September 26, 2022, passed by the Respondent No. 2. These orders are quashed and set aside. Consequential relief to follow. The Respondent No. 2 is directed to grant an opportunity of personal hearing to the petitioner and thereafter pass a reasoned order in accordance with the law within a period of two months from date.

16. This writ petition is, accordingly, allowed.

**Order:** 01.02.2024
Kuldeep

(Shekhar B. Saraf, J.)