

Allahabad High Court

M/S B L Pahariya Medical Store vs State Of U.P. And Another on 22 August, 2023

Bench: Pritinker Diwaker, Chief Justice, Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:168698-DB

Chief Justice's Court

Case :- WRIT TAX No. - 981 of 2023

Petitioner :- M/S B L Pahariya Medical Store

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Aditya Pandey, learned counsel for the assessee and Sri Nimai Das, learned Additional Chief Standing Counsel for the State Respondents.
2. In absence of any dispute as to fact, the matter has been proceeded with the consent of parties at the fresh stage itself.
3. Challenge has been raised to the order dated 21.03.2023 passed by the Deputy Commissioner, State Tax, Sector-1, Karvi, for the tax period July 2017 to March 2018, whereby demand in excess to Rs. 26 Lacs has been raised against the present petitioner.
4. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 12.07.2022 seeking his reply within 15 days.
5. Relying on Section 75(4) of the U.P. GST Act, 2017 (hereinafter referred to as the 'Act') as interpreted by a coordinate bench of this Court in Bharat Mint & Allied Chemicals Vs. Commissioner

Commerical Tax & 2 Ors., (2022) 48 VLJ 325, it has been then asserted, the Assessing Authority was bound to afford opportunity of personal hearing to the petitioner before he may have passed an adverse assessment order. Insofar as the assessment order has raised disputed demand of tax and penalty about Rs. 26 Lacs, the same is wholly adverse to the petitioner. In absence of opportunity of hearing afforded, the same is contrary to the law declared by this Court in Bharat Mint & Allied Chemicals (supra). Reliance has also been placed on a decision of the Gujarat High Court in M/S Hitech Sweet Water Technologies Pvt. Ltd. Vs. State of Gujarat, 2022 UPTC (Vol. 112) 1760.

6. Having hearing learned counsel for the parties and having perused the record, Section 75(4) of the Act reads as under :

"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."

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 21.03.2023, while reply to the show-cause-notice had been entertained on 30.12.2022. 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 interest of justice and allow a better appreciation to arise at the next/appeal stage, if required.

10. Accordingly, the present writ petition is allowed. The impugned order dated 21.03.2023 is set aside. The matter is remitted to the Respondent No.2/Assistant Commissioner, State Tax, Sector-1, Karvi, to issue a fresh notice to the petitioner within a period of two weeks from today. The petitioner undertakes to appear before that authority on the next date fixed such that proceedings may be concluded, as expeditiously as possible.

Order Date :- 22.8.2023

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(Ashutosh Srivastava, J.)

(Pritinker Diwaker, C.J.)

