

M/S Kenten Beverages Llp Lko. Thru. Its Partner Sanjay Mago v. State Of U.P. Thru. Prin. Secy. (Institutional Finance) U.P. Govt. Lko. And Another

WRIT TAX No. 43 of 2024 | Decision: 2024-03-05 | Allahabad High Court (Lucknow Bench)

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Neutral Citation No. - 2024:AHC-LKO:19866-DB

Court No. - 2

Case :- WRIT TAX No. - 43 of 2024

Petitioner :- M/S Kenten Beverages Llp Lko. Thru. Its Partner Sanjay Mago Respondent :- State Of U.P. Thru. Prin. Secy. (Institutional Finance) U.P. Govt. Lko. And Another Counsel for Petitioner :- Anurag Mishra Counsel for Respondent :- C.S.C.

Hon'ble Vivek Chaudhary,J. Hon'ble Om Prakash Shukla,J.

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner and learned Standing Counsel for State respondents.
2. Challenge has been raised to the order dated 31.08.2021 passed by the Deputy Commissioner, State Tax, Sector-09, Lucknow for the tax period 2017-18, whereby demand in excess to Rs.1,13,89,264/- has been raised against the present petitioner.
3. Solitary ground being pressed in the present petition is, the only notice in the proceedings was issued to the petitioner on 05.06.2021 seeking his reply within 30 days. Referring to item no. 3 of the table appended to that notice, it has been pointed out, the Assessing Authority had at that stage itself chosen to not give any opportunity of hearing to the petitioner by mentioning "NA" against column description "Date of personal hearing". Similar endorsements were made against the columns for "Time of personal hearing" and "Venue where personal hearing will be held". Thus, it is the objection of learned counsel for the petitioner, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.
4. 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 about Rs.19 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.

5. 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."

6. 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.

7. 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 31.08.2021. 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.

8. 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.

9. Accordingly, the present writ petition is allowed. The impugned order dated 31.08.2021 is set aside. The matter is remitted to the respondent no.2/Deputy Commissioner, State Tax, Sector-09, Lucknow 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 :- 5.3.2024 Arti/-

[Om Prakash Shukla,J.] [Vivek Chaudhary,J.]

2024-03-05T17:31:34+0530 High Court of Judicature at Allahabad, Lucknow Bench
2024-03-05T17:31:38+0530 High Court of Judicature at Allahabad, Lucknow Bench