

M/S Mohan Agencies v. State of U.P. and Another

WRIT TAX No. 58 of 2023 | Decision: 2023-02-13 | Allahabad High Court

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Court No. - 29

Case :- WRIT TAX No. - 58 of 2023

Petitioner :- M/S Mohan Agencies Respondent :- State of U.P. and Another Counsel for Petitioner :- Vishwjit Counsel for Respondent :- C.S.C

Hon'ble Pritinker Diwaker, Acting Chief Justice Hon'ble Saumitra Dayal Singh, J.

1. Heard Sri Vishwjit, learned counsel for the assessee and Sri Ankur Agarwal, learned counsel for the revenue.
2. Pursuant to the earlier order, Sri Ankur Agarwal, learned counsel for the revenue has received written instructions. 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 21.10.2022 passed by the Assistant Commissioner, State Tax, Sector-6, Aligarh for the tax period July 2017 to March 2018, whereby demand in excess to Rs. 10 crores 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 13.05.2022 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.
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 Commercial Tax & 2 Ors., (2022) 48 V LJ 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. 10 crores, 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. On the other hand, learned counsel for the revenue would contend, the petitioner was denied opportunity of hearing because he had tick marked the option 'No' against the option for personal hearing (in the reply to the show-cause-notice), submitted through online mode. Having thus declined the opportunity of hearing, the petitioner cannot turn around to claim any error in the impugned order passed consequently.

7. 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."

8. 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.

9. 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 21.10.2022, while reply to the show-cause-notice had been entertained on 14.09.2022. 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.

10. 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.

11. Accordingly, the present writ petition is allowed. The impugned order dated

21.10.2022 is set aside. The matter is remitted to the respondent no.2/Assistant Commissioner, State Tax, Sector-6, Aligarh 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 :- 13.2.2023 Abhilash

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(S. D. Singh, J) (Pritinker Diwaker, ACJ)

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