

प्रेषक,

कमिश्नर, वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

सेवा में,

एडीशनल कमिश्नर, वाणिज्य कर, गौतमबुद्धनगर, जोन-नोएडा,
एवं समस्त एडीशनल कमिश्नर ग्रेड-1, वाणिज्य कर, उ0प्र0।

13

(वाद अनुभाग)

लखनऊ :: दिनांक :: जून, 2024

महोदय,

कृपया अपर आयुक्त ग्रेड-1 (उ0न्या0कार्य), राज्य कर, प्रयागराज के पत्र संख्या-682 दिनांक 22.05.2024 (प्रति संलग्न) का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा रिट टैक्स संख्या-672/2024, सर्वश्री एन0एस0 एग्री एण्ड इंजीनियरिंग प्रोडक्ट्स एवं रिट टैक्स संख्या-674/2024, सर्वश्री लारिकन इंजीनियरिंग प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य के वाद के सम्बन्ध में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 16.05.2024 (प्रति संलग्न) के बिन्दु संख्या-13 के अनुक्रम में आवश्यक कार्यवाही कराने हेतु प्रेषित की गयी है। मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 16.05.2024 का बिन्दु संख्या-09 से 13 निम्नवत् है -

9. In view of the facts noted above, before any adverse order passed in an adjudication proceeding, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority, (in those facts), to proceed to deal with the case on merits, ex-parte. Also, another situation may exist where even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situations apart, we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings.
10. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings.
11. Accordingly, the writ petition is disposed of with the following observations/directions : (i) The impugned order dated 19.08.2021 passed by the respondent no. 2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar, is hereby set-aside. (ii) The matter is remitted to the respondent no.2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar to pass a fresh order, in accordance with law, after affording due opportunity of hearing to the petitioner.
12. While, we proposed to impose heavy costs for the conduct offered by the respondent no. 2, we have been assured by the learned Additional Chief Standing Counsel, such occurrences will not be repeated in future.
13. Accordingly, we direct the Commissioner, Commercial Tax, Uttar Pradesh to undertake remedial measures including providing for disciplinary proceedings against erring

officials, where fundamental principles of natural justice may be violated by the adjudicating authorities, without justifiable reason.

प्रश्नगत प्रकरण में यू0पी0जी0एस0टी0 अधिनियम की धारा-75(4) के अन्तर्गत अनिवार्य व्यक्तिगत सुनवाई का अवसर व्यापारी को न देने का कारण तथा प्राकृतिक न्याय के विपरीत होने के कारण व्यापारी की रिट पिटीशन स्वीकार की है तथा कर निर्धारण आदेश विखण्डित करते हुए व्यापारी को सुनवाई का अवसर देने के बाद पुनः आदेश पारित करने के निर्देश दिये हैं। इसके साथ ही दोषी अधिकारी के विरुद्ध अनुशासनिक कार्यवाही का आदेश दिया है। मा0 उच्च न्यायालय द्वारा कमिश्नर, वाणिज्य कर को सुधारात्मक कदम (Remedial Measures) उठाने के निर्देश भी दिये गये हैं। उक्त सम्बन्ध में इस कार्यालय के पत्र संख्या-1726 दिनांक 27.03.2024 द्वारा रिट टैक्स संख्या-303/2024, सर्वश्री महावीर ट्रेडिंग कम्पनी बनाम डिप्टी कमिश्नर स्टेट टैक्स एण्ड अदर के सम्बन्ध में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 04.03.2024 की प्रति प्रेषित करते हुए पूर्व में भी निर्देशित किया जा चुका है। ऐसा प्रतीत होता है कि उक्त का अनुपालन सम्बन्धित अधिकारियों द्वारा नहीं किया जा रहा है जिसके कारण मा0 उच्च न्यायालय द्वारा बार-बार कमिश्नर, वाणिज्य कर, उ0प्र0 को निर्देशित किया जा रहा है।

अतः रिट टैक्स संख्या-672/2024, सर्वश्री एन0एस0 एग्रो एण्ड इंजीनियरिंग प्रोडक्ट्स एवं रिट टैक्स संख्या-674/2024, सर्वश्री लास्किन इंजीनियरिंग प्रा0लि0 बनाम उ0प्र0 सरकार व अन्य के वाद के सम्बन्ध में मा0 उच्च न्यायालय, इलाहाबाद के निर्णय दिनांक 16.05.2024 की प्रति प्रेषित करते हुए निर्देशित किया जाता है कि अपने अधीनस्थ समस्त अधिकारियों को उक्त से अवगत कराएं तथा मा0 न्यायालय के उक्त आदेश के अनुसार उ0प्र0 माल और सेवाकर अधिनियम की धारा-75(4) के प्राविधानों का कड़ाई से पालन किया जाय तथा प्राकृतिक न्याय के सिद्धांत को अनिवार्यतः सुनिश्चित किया जाये। उपरोक्त के उल्लंघन पर कठोर कार्यवाही की जायेगी।

यह पत्र कमिश्नर, वाणिज्य कर, उ0प्र0 के अनुमोदनोपरान्त जारी किया जा रहा है।
संलग्नक-उपरोक्तानुसार।

भवदीय,

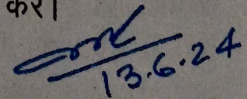
(अमर नाथ यादव)

एडीशनल कमिश्नर (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

पृष्ठांकन पत्र संख्या व दिनांक उक्त।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. एडीशनल कमिश्नर ग्रेड-1/2 (उ0न्या0कार्य), वाणिज्य कर, प्रयागराज/लखनऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु।
2. ज्वाइंट कमिश्नर (आई0टी0), वाणिज्य कर, मुख्यालय को इस निर्देश के साथ कि उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।


13.6.24

एडीशनल कमिश्नर (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

Office-Additional Commissioner Gr-1
Commercial Tax, Prayagraj
(High Court Works)



राष्ट्र
कर
बाजार

कोर्ट केस/महत्वपूर्ण

प्रेषक,

अपर आयुक्त ग्रेड-1 (उ०न्या०कार्य)
राज्य कर, प्रयागराज।

सेवा में,

उपायुक्त, राज्य कर,
सिकन्द्राबाद, बुलन्दशहर।

पत्रांक : /अपर आयु०ग्रेड-1(उ०न्या०कार्य) रा०क०, प्रयाग० : २२ मई, 2024

विषय : रिट टैक्स सं०-672/2024 सर्वश्री एन०एस० एग्रो एण्ड इंजीनियरिंग प्रोडक्ट्स एवं रिट टैक्स संख्या- 674/2024 सर्वश्री लास्किन इंजीनियरिंग प्रा०लि० बनाम उ०प्र० सरकार व अन्य के वाद के सम्बन्ध में।

महोदय,

उपरोक्त विषयक दोनो वाद दिनांक 16.05.2024 को मा० उच्च न्यायालय इलाहाबाद के कोर्ट नं० 39 के समक्ष सुनवाई हेतु प्रस्तुत हुआ। वाद की सुनवाई के उपरान्त मा० न्यायालय द्वारा उक्त वादों को कतिपय निर्देश के साथ Disposed of कर दिया गया है।

मा० उच्च न्यायालय इलाहाबाद के उक्त दोनो आदेश दि० 16.05.2024 की इण्टरनेट प्रति इस पत्र के साथ संलग्न कर समयान्तर्गत अग्रिम आवश्यक कार्यवाही हेतु प्रेषित की जा रही है।
संलग्नक-उपरोक्तानुसार।

भवदीय,

(नम्रता वर्मा)

उपायुक्त (उ०न्या०कार्य) राज्य कर,
प्रयागराज।

682(2)
पृ०प०सं० : /व दिनांक उक्त।

प्रतिलिपि : निम्नलिखित को दोनो आदेश दिनांक 16.05.2024 की इण्टरनेट प्रति सहित सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. संयुक्त सचिव, संस्थागत वित्त कर एवं निबन्धन अनुभाग-2, उ०प्र० शासन, लखनऊ।
2. आयुक्त (वाद अनुभाग) राज्य कर मुख्यालय, लखनऊ को दोनो आदेश दिनांक 16.05.2024 के बिन्दु संख्या-13 के अनुक्रम में आवश्यक कार्यवाही हेतु प्रेषित।
3. अपर आयुक्त ग्रेड-1, राज्य कर, गाजियाबाद जोन-द्वितीय गाजियाबाद।
4. संयुक्त आयुक्त (कार्यपालक) राज्य कर, बुलन्दशहर सम्भाग, बुलन्दशहर।
5. दो अतिरिक्त प्रतियां गार्ड फाइल हेतु।

संलग्नक-उपरोक्तानुसार।

उपायुक्त (उ०न्या०कार्य) राज्य कर,
प्रयागराज।

धीप्ती जी

Court No. - 39

Case :- WRIT TAX No. - 672 of 2024

Petitioner :- Ns Agro And Engineering Products

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Abhishek Rai, Ramesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Alok Yadav, Advocate holding brief of learned counsel for the petitioner, Shri Nimai Dass, learned Additional Chief Standing Counsel for the State-respondents.
2. Challenge has been raised to the order dated 19.08.2021 passed by the Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar, under Section 74(9) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act').
3. At the very outset, learned Additional Chief Standing Counsel has raised a preliminary objection as to the availability of remedy of appeal under Section 107 of the Act.
4. That objection has been met by the learned counsel appearing for the petitioner on the strength of (violation of) Section 75(4) of the Act.
5. It is basic to procedural law under taxing statutes that opportunity of personal hearing must be provided to an assessee before any assessment/adjudication order is passed against him. Thus, we find it strange and wholly unacceptable merely because the substantive law has changed, the revenue authorities have

changed their approach and are failing to observe that mandatory requirement of procedural law. They have thus denied opportunity of hearing to the assessee.

6. Section 75(4) of the Act reads as below:

"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. It transpires from the record, neither the adjudicating authority issued any further notice to the petitioner to show cause or to participate in the oral hearing, nor he granted any opportunity of personal hearing to the petitioner.

8. On query made, the learned Additional Chief Standing Counsel fairly submits, in light of similar occurrences, noticed in other litigation, he had apprised the Commissioner, Commercial Tax. In turn, the Commissioner, Commercial Tax, Uttar Pradesh, has issued Office Memo No. 1406 dated 12.11.2024. The same has been addressed to all Additional Commissioner to be communicated to all field formations for necessary compliance. It reads as below:

- "1. The column in which date of personal hearing has to be mentioned, only N.A. is mentioned without mentioning any date.*
- 2. The column in which time of personal hearing has to be mentioned, only N.A. is mentioned without mentioning time of hearing.*
- 3. In some cases, the date of personal hearing is prior to which reply to the Show Cause Notice has to be submitted this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.*

4. In some cases, the date of personal hearing is on the same date to which reply to the Show Cause Notice has to be submitted-this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

5. In all cases observed, the date of passing order either u/s 73(9)/74(9) etc. of the Act is not commensurate to the date of personal hearing. It is trite law that the date of the order has to be passed on the date of personal hearing. For eg., the date of furnishing reply to SCN is 15.11.2023 and date of personal hearing is 17.11.2023, then the date of order has to be 17.11.2023"

9. In view of the facts noted above, before any adverse order is passed in an adjudication proceeding, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority, (in those facts), to proceed to deal with the case on merits, ex-parte. Also, another situation may exist where even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situations apart, we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings.

10. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter-productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings.

11. Accordingly, the writ petition is disposed of with the following observations/directions:

(i) The impugned order dated 19.08.2021 passed by the respondent

no. 2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar, is hereby set-aside.

(ii) The matter is remitted to the respondent no.2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar to pass a fresh order, in accordance with law, after affording due opportunity of hearing to the petitioner.

12. While, we proposed to impose heavy costs for the conduct offered by the respondent no. 2, we have been assured by the learned Additional Chief Standing Counsel, such occurrences will not be repeated in future.

13. Accordingly, we direct the Commissioner, Commercial Tax, Uttar Pradesh to undertake remedial measures including providing for disciplinary proceedings against erring officials, where fundamental principles of natural justice may be violated by the adjudicating authorities, without justifiable reason.

Order Date :- 16.5.2024

SA

(Donadi Ramesh, J.)

(S.D. Singh, J.)

Court No. - 39

Case :- WRIT TAX No. - 674 of 2024

Petitioner :- Laskin Engineering Pvt Ltd

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Abhishek Rai, Ramesh Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. Heard Shri Alok Yadav, Advocate holding brief of learned counsel for the petitioner, Shri Nimai Dass, learned Additional Chief Standing Counsel for the State-respondents.
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5. It is basic to procedural law under taxing statutes that opportunity of personal hearing must be provided to an assessee before any assessment/adjudication order is passed against him. Thus, we find it strange and wholly unacceptable merely because the substantive law has changed, the revenue authorities have

changed their approach and are failing to observe that mandatory requirement of procedural law. They have thus denied opportunity of hearing to the assessee.

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3. In some cases, the date of personal hearing is prior to which reply to the Show Cause Notice has to be submitted this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

4. In some cases, the date of personal hearing is on the same date to which reply to the Show Cause Notice has to be submitted-this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

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10. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings.

11. Accordingly, the writ petition is **disposed of** with the following observations/directions :

(i) The impugned order dated 19.08.2021 passed by the respondent

no. 2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar, is hereby set-aside.

(ii) The matter is remitted to the respondent no.2-Deputy Commissioner, Commercial Tax Department, Sikandrabad, Bulandshahar to pass a fresh order, in accordance with law, after affording due opportunity of hearing to the petitioner.

12. While, we proposed to impose heavy costs for the conduct offered by the respondent no. 2, we have been assured by the learned Additional Chief Standing Counsel, such occurrences will not be repeated in future.

13. Accordingly, we direct the Commissioner, Commercial Tax, Uttar Pradesh to undertake remedial measures including providing for disciplinary proceedings against erring officials, where fundamental principles of natural justice may be violated by the adjudicating authorities, without justifiable reason.

Order Date :- 16.5.2024
SA

(Donadi Ramesh, J.)

(S.D. Singh, J.)