

पत्र संख्या- वा0अनु0/परिपत्र/2024-25/

1518

/ राज्य कर,

प्रेषक,

आयुक्त, राज्य कर,

उत्तर प्रदेश, लखनऊ।

सेवा में,

अपर आयुक्त, राज्य कर, गौतमबुद्धनगर, जोन-नोएडा,

समस्त अपर आयुक्त ग्रेड-1, राज्य कर, उ0प्र0,

समस्त अपर आयुक्त ग्रेड-2, राज्य कर, उ0प्र0,

समस्त संयुक्त आयुक्त, राज्य कर, उ0प्र0,

समस्त उपायुक्त, राज्य कर, उ0प्र0,

समस्त सहायक आयुक्त, राज्य कर, उ0प्र0,

समस्त राज्य कर अधिकारी, उ0प्र0।

(वाद अनुभाग)

लखनऊ:: दिनांक:: 28 नवम्बर, 2024

कृपया मुख्यालय के परिपत्र संख्या-1406 दिनांक 12.01.2024, परिपत्र संख्या-1726 दिनांक 27.03.2024 तथा परिपत्र संख्या-482 दिनांक 13.06.2024 का संदर्भ ग्रहण करने का कष्ट करे, जिसके द्वारा रिट टैक्स संख्या-303/2024 सर्वश्री महावीर ट्रेडिंग कम्पनी बनाम डिप्टी कमिश्नर व अन्य, रिट टैक्स संख्या-672/2024 सर्वश्री एन0एस0 एग्रो एण्ड इन्जीनियरिंग प्रोडक्ट्स बनाम स्टेट आफ यू0पी0 एवं अन्य तथा रिट टैक्स संख्या-674/2024 सर्वश्री लार्सिकन इन्जीनियरिंग प्रा0लि0 बनाम स्टेट आफ यू0पी0 एवं अन्य के वाद में मा0 उच्च न्यायालय इलाहाबाद द्वारा दिये निर्णयों के परिप्रेक्ष्य में आवश्यक दिशा-निर्देश जारी किये गये थे -

1)- रिट टैक्स संख्या-303/2024 सर्वश्री महावीर ट्रेडिंग कम्पनी में मा0 उच्च न्यायालय, इलाहाबाद द्वारा दिनांक 04.03.2024 के आदेश के पैरा-11, 12 में निम्न निर्णय दिये गये हैं-

"11. 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.

12. 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."

2)- रिट टैक्स संख्या-674/2024 सर्वश्री लार्सिकन इन्जीनियरिंग प्रा0लि0 में मा0 उच्च न्यायालय, इलाहाबाद द्वारा दिनांक 16.05.2024 के आदेश के पैरा-05 से 10 तक में निम्न निर्णय दिये गये हैं-

श्रीमती सुष्मिता
AS
6/11/24
DC (IT)
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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.

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 12.01.2024. 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 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."

3)- रिट टैक्स संख्या-1180/2023 सर्वश्री विश्वनाथ ट्रेडर्स में मा0 उच्च न्यायालय, इलाहाबाद द्वारा दिनांक 17.10.2023 के आदेश के पैरा-09 से 10 तक में निम्न निर्णय दिये गये हैं-

"9. From the perusal of the impugned order, it transpires that the same has been passed without recording any cogent reason for cancelling the GST registration of the petitioner no.3 and appellate authority has also dismissed the appeal filed by the petitioner (s) summarily without assigning any reason.

10. In the recent judgment of this Court passed in the case of Namo Narayan Singh (supra), on an identical sets of fact, in para Nos. 9, 10, 11, 12, 13, 14 & 15 has held as under:-

"9. An order without valid reasons cannot be sustained. To give reasons is the rule of natural justice, highlighting this rule, Hon'ble Supreme Court held in the case of The Secretary & Curator, Victoria Memorial v. Howrah Ganatantrik Nagrik Samity and ors., JT 2010(2)SC 566 para 31 to 33 as under :

"31. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration justice - delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind. " [Vide State of Orissa Vs. Dhaniram Luhar (JT 2004(2) SC 172 and State of Rajasthan Vs. Sohan Lal & Ors. JT 2004 (5) SCC 338:2004 (5) SCC 573].

32. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. [Vide Raj Kishore Jha Vs. State of Bihar & Ors. AIR 2003 SC 4664; Vishnu Dev Sharma Vs. State of Uttar Pradesh & Ors. (2008) 3 SCC 172; Steel Authority of India Ltd. Vs. Sales Tax Officer, Rourkela I Circle & Ors. (2008) 9 SCC 407; State of Uttaranchal & Anr. Vs. Sunil Kumar Singh Negi AIR 2008 SC 2026; U.P.S.R.T.C. Vs. Jagdish Prasad Gupta AIR 2009 SC 2328; Ram Phal Vs. State of Haryana & Ors. (2009) 3 SCC 258; Mohammed Yusuf Vs. Faj Mohammad & Ors. (2009) 3 SCC 513; and State of Himachal Pradesh Vs. Sada Ram & Anr. (2009) 4 SCC 422].

33. Thus, it is evident that the recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected may know, as why his application has been rejected."

उपरोक्त प्रकरणों में उ0प्र0 माल एवं सेवा कर अधिनियम की धारा-75(4) के अन्तर्गत व्यक्तिगत सुनवाई का अवसर व्यापारी को न दिये जाने के कारण तथा प्राकृतिक न्याय के सिद्धान्तों के विपरीत होने के कारण व्यापारी की रिट पिटीशन स्वीकार की है तथा कर निर्धारण आदेश विखण्डित करते हुये 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 गया है। मा0 उच्च न्यायालय द्वारा कमिश्नर, वाणिज्य कर को सुधारात्मक कदम (Remedial Measures) उठाने के निर्देश भी दिये गये हैं।

माननीय उच्च न्यायालय इलाहाबाद द्वारा उपरोक्त सभी मामलो में यह निर्णय दिया गया है कि व्यापारी के विरुद्ध कोई प्रतिकूल निर्णय पारित करने के पूर्व सुनवाई का अवसर दिया जाए। उपरोक्त से स्पष्ट है कि फील्ड स्तर पर उत्तर प्रदेश जी०एस०टी० अधिनियम की धारा 75(4) का सम्यक अनुपालन नहीं किया जा रहा है, जिससे मा० उच्च न्यायालय के समक्ष विभाग को अप्रिय स्थिति का सामना करना पड़ रहा है।

अतः रिट टैक्स संख्या-1180/2023 सर्वश्री विश्वनाथ ट्रेडर्स, रिट टैक्स संख्या-303/2024 सर्वश्री महावीर ट्रेडिंग कम्पनी, रिट टैक्स संख्या-672/2024 सर्वश्री एन०एस० एगो एण्ड इन्जीनियरिंग प्रोडक्ट्स, रिट टैक्स संख्या-674/2024 सर्वश्री लारिकन इन्जीनियरिंग प्रा०लि के वादों में दिये गये निर्णयों के क्रम में समस्त अधिकारियों को निर्देशित किया जाता है कि उ०प्र० माल एवं सेवा कर अधिनियम की धारा-75 (4) के प्राविधानों एवं प्राकृतिक न्याय के सिद्धान्त का कड़ाई से अनुपालन सुनिश्चित किया जाये।

(डा० नितिन बन्सल)
आयुक्त, राज्य कर,
उत्तर प्रदेश, लखनऊ।

प०प०सं० व दिनांक उक्त प्रतिलिपि -

- 1-अपर आयुक्त ग्रेड-1 (उ०न्या०कार्य), राज्य कर, प्रयागराज को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
- 2-अपर आयुक्त ग्रेड-2 (उ०न्या०कार्य), राज्य कर, लखनऊ को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।
- 3-संयुक्त आयुक्त (आई०टी०), राज्य कर, मुख्यालय, लखनऊ को इस निर्देश के साथ प्रेषित की उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।

28-11-24
संयुक्त आयुक्त (वाद), राज्य कर,
मुख्यालय, लखनऊ।