

Decoding Natural Justice in GST Cases

By: Team Tax Connect

Section 75 of The CGST Act 2017 is a Code in Itself for invocation of Natural Justice in GST Cases and states as follows –

"75 (4) 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.

75 (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

75 (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

75 (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

We Decode these one by one -

1. As per Section 75(4), an "opportunity of hearing" must be granted in two situations viz-
 - (a) where a request in specific is received in writing from the person chargeable;
 - (b) where any adverse decision is contemplated against such person.

It is a trite law that when language of statute is plain and unambiguous, it should be given effect to irrespective of its consequences. The language employed in sub-section 4 of Section 75 of the Act leaves no room for any doubt that the word 'or' is used by the law makers for

a specific purpose. Although, in the first portion of the statute, i.e. sub-section 4 of Section 75 of the Act, the statute talks about a specific request, the portion after the word 'or' makes it clear that opportunity of hearing is required to be given, even in those cases where no such request is made but adverse decision is contemplated against such person.

Now the question is whether 'opportunity of hearing' does not include the opportunity of 'personal hearing' and involves mere opportunity of 'written representation'. It was held in the case of *M/s PATANJALI AYURVED LIMITED Vs THE STATE OF MADHYA PRADESH* [2024-VIL-77-MP] that even law makers while prescribing the statutory form has visualized different stages for the purpose of 'personal hearing'. The one stage is when the reply is submitted and the other stage is date, venue and time of the personal hearing, whether or not the petitioner asks for it.

2. Section 75(5) makes it clear that atleast 3 adjournments must be provided on reasonable cause being shown. Many a times this Rule of 3 Adjournments is not followed, which can be challenged in higher forums.

3. Section 75 (6) invokes the rule of passing a 'speaking order'. Hence the proper officer, in his order, shall set out the relevant facts and the basis of his decision. The order passed and its reasoning by the authority must be proper, relevant, in accordance with the arguments raised and questions of law asked, and the coordination between the reasons and the conclusion. The body of the reasons is the discretion of the authority and manner that is not improper according to a reasonable person.

If the reasons recorded in support of the conclusion reached are found to be unclear or irrelevant or incorrect, such order passed by the authority may be set aside.

4. Section 75(7) requires that the Order passed must not travel beyond the Show Cause Notice. The Hon'ble Calcutta High Court in *Earth mark Traders v. Joint Commissioner, State Tax, China bazar & Rajarata Charge & anr.* [MAT 791 of 2023 dated May 12, 2023] set aside the order passed by Appellate Authority and held that the Appellate Authority cannot travel beyond the allegations made in the Show Cause Notice.

LET'S DISCUSS FURTHER!

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