



# Lawgics

By Nidhi, Advocate



**Judgment No.: 072**  
**Dt.: 20-02-2024**



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## Judgment Deals With

<b>Section/Rule</b>	Section 75
<b>Authority</b>	Allahabad High Court
<b>Case Name</b>	M/s. Atlas Cycles Haryana Ltd. VS State of U.P.
<b>Dated</b>	12 <sup>th</sup> February, 2024

### Brief Facts:

The first notice issued to the petitioner under Section 73 of the GST Act dated 29.09.2023 did intend to call for a reply from the petitioner but did not propose to grant personal hearing as the abbreviation "NA" was specified against the column "date of personal hearing". Similar narration appears in the further notice issued to the petitioner dated 28.11.2023. In that SCN, against the columns to specify the date, time & venue of personal hearing, the abbreviation "NA" i.e. Not Applicable were recorded.

### Contention of the Petitioner:

The petitioner was never afforded any opportunity of personal hearing. Thus, upon service of notice the petitioner had been called to file its reply only. The petitioner's business operations were lying closed since 2020. Therefore, for reasons of disruption of business operation, petitioner committed a mistake in not responding the notice, within time. Non-compliance of that show cause notice may have only led to closure of opportunity to submit written reply. However, by virtue of the express provision of Section 75 of GST Act, even in that situation petitioner did not lose its right to participate in the oral hearing and establish at that stage itself that adverse conclusions proposed to be drawn against petitioner, may be dropped.

### Findings & Decision of the Court:

The rules of natural justice as are ingrained in the statute prescribe dual requirement. First with respect to submission of written reply and the second with respect to oral hearing. Failure to avail one opportunity may not lead to denial of the other. The two tests have to be satisfied independently. The discrepancies in the returns as noticed by the adjudicating authority would have been clarified if opportunity of personal hearing had been granted. Thus, the order impugned has been passed contrary to the mandatory procedure. The deficiency of procedure is self apparent and critical to the outcome of the proceedings. Accordingly, the impugned order dated 17.12.2023 was set aside & matter was remitted to Department to pass fresh order.

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