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By Nidhi, Advocate



Judgment No.: 089
Dt.: 14-03-2024



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Judgment Deals With

Section/Rule	Section 75
Authority	Allahabad High Court
Case Name	M/s. Gaurav Enterprizes VS State of U.P.
Dated	13 th October, 2023

Brief facts of the case:

Petitioner is aggrieved by the order, dated 04.02.2023, whereby liability has been raised for deposit of GST under Section 74 of GST Act. The order impugned has been passed pursuant to the show cause notice issued on 09.10.2022. This notice contains a stipulation, 'NA' in the place of date of hearing which is required to be specified in the show cause notice.

Contention of the Petitioner:

No opportunity of hearing has been given in the matter; as such the impugned order cannot be sustained.

Findings & Decision of the Court:

The Assessing Authority had itself chosen to not give any opportunity of hearing to the petitioner by mentioning "NA" against column description "Date of personal hearing" & "Time of personal hearing" and "Venue where personal hearing will be held". Thus, the petitioner was completely denied opportunity of oral hearing before the Assessing Authority.

Relying on Section 75(4) of the GST Act, 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. 6 crores, the same is wholly adverse to the petitioner.

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.

Even otherwise in the context of an assessment order creating heavy civil liability, observing such minimal opportunity of hearing is a must. It has to be ensured that such opportunity is granted in real terms.

Thus, the impugned order dated 04.02.2023 was set aside & the matter was remitted to Assistant Commissioner.

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