



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 11th OF JULY, 2025

WRIT PETITION No. 20336 of 2023

M/S VISHNU ESSENCE THROUGH ITS PARTNER AMIT BOTHRA

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

.....
Appearance:

Shri Gagan Tiwari – Advocate for petitioner.

Shri Anand Soni – Additional Advocate General for resp. Nos. 1-3/State.

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WRIT PETITION No. 20339 of 2023

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ORDER

Per: Justice Binod Kumar Dwivedi

These Writ Petitions under Article 226 of the Constitution of India have been filed challenging legality and validity of the impugned order DRC-07, dated 09.06.2023 for the period 2018-19, 2019-20 respectively passed by the



respondent No. 3 under Section 74 (9) of the Madhya Pradesh Goods and Services Tax, 2017 (hereinafter referred for short 'the MPGST Act') on the ground that the impugned order is cryptic, non-speaking, non-reasoned and laconic passed without application of mind and also in gross violation of principles of natural justice as the petitioners even after request in writing have not been afforded an opportunity of mandatory personal hearing in terms of Section 75(4) of the MPGST Act before passing the impugned order. The petitioner prays for following reliefs:-

“7.1 Issue a Writ order or direction in the nature of Certiorari quashing the impugned assessment order (DRC-07) dated 09.06.2023 (Annexure P/6) having reference no. ZD2306230044570 passed by the, Respondent No.03;

7.2. To hold any Determination of Tax/ Assessment u/s 74 of the Act on the basis of Search & Seizure action u/s 67 of the Act has to be done only on the basis of material recovered/impounded during search action u/s 67 (2) of the Act and no addition can be made on items which are already recorded in the books of account as electricity fluctuation and consumption of electricity is already recorded in the books at the time of search cannot be made basis for addition pursuant to search action.

7.3 To hold the impugned determination of turnover and additional levy of CGST, SGCT & CESS and penalty only on the basis of electricity consumption is illegal, bad in law and against the settled principle of law;

7.4. Without prejudice to above alternately, issue a Writ order or direction in the nature of Certiorari remanding the matter back to the file of the to adjudicate the case afresh after giving reasonable opportunity of hearing to the petitioner.



7.5. Pass any further order/direction or orders may be given as to this Hon'ble Court may deem fit and proper.”

Facts have taken from W.P. No. 20336/2023:

02. Facts in brief are that the petitioner is a partnership firm registered under the provisions of Indian Partnership Act, 1932 and also duly registered under MPGST Act, 2017. Search and seizure action was conducted at the premises of petitioner under Section 67 of the MPGST Act by anti-evasion bureau wing of respondent department on 10.01.2020 and report under Section 67(2) was prepared. The report was forwarded to respondent No.3, Deputy Commissioner of State tax, Indore Circle – 11 Division II, who is the jurisdictional authority to adjudicate the cases of petitioner pertaining to GST Act. The respondent No. 3 acting upon the report initiated the impugned proceedings under Section 74 of the MPGST Act. On the basis of two reports, one by search wing and another by Chartered Engineer, respondent No.3 initiated the proceedings under Section 74 of the MPGST Act and served intimation (DRC-01A) dated 05.05.2022 under Section 74(5) of the MPGST Act r/w Rule 142 (1A) of the Act through which various additional liabilities in the form of CGST, SGTS & CESS were demanded from the petitioner on the basis of Chartered Engineer report and estimated electricity consumption. DRC-01A lastly states that in case the petitioner fails to deposit the additional demand as



mentioned in the intimation then a show cause notice in form of DRC-01 will be issued. In reply to the above intimation dated 27.05.2022, the petitioner filed its objection in part B (DRC-01A) through which petitioner asked for documents, details, ground and quantification on the basis of which said allegations and additional liability has been raised. Thereafter ignoring the objections respondent No. 3 issued show cause notice in form DRC-01 under Section 74(1) of the MPGST Act dated 01.03.2023 (Annexure P/4) against the petitioner. Against the show cause notice, detailed reply was submitted by the petitioner. Even after prayer in writing for personal hearing as provided under Section 75(4) of the MPGST Act, but no personal hearing was given which is against the principles of natural justice and vitiates the proceeding. On these submissions, learned counsel for the petitioners prays for allowing the petition and granted the relief as prayed for.

03. Learned counsel for the petitioners relying upon the judgments of *Technosys Security System (P) Ltd. Vs. Commissioner, Commercial Taxes* reported in (2023) 157 taxmann.com 145 (MP) and *Future Consumer Ltd. Vs. State of M.P.* reported in (2025) 171 taxmann.com 702 (M.P.), submits that impugned order DRC-07 dated 09.06.2023 (Annexure P/6) passed by respondent No. 3 is bad in law as has been passed without affording opportunity of hearing as provided under Section 75(4) of the MPGST Act, therefore, prays



for quashing the aforesaid order filed against the petitioners and grant of reliefs as claimed in petition .

04. Learned counsel for the respondent(s) opposed the prayer on the ground that no exception can be taken to the impugned order as it has been passed following the due procedure as provided under the law and prays for dismissal of the petitions.

05. Heard and considered the rival submissions made by the learned counsel for the parties and perused the record.

06. Section 75(4) of the MPGST Act provides some mandatory provision of opportunity of hearing where request is received in writing. Section 75(4) of the MPGST Act reads as under:-

*“75. General provisions relating to determination of tax
(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.”*

07. Apart that, principles of natural justice which are evolved from the legal maxim “*Audi Alteram Partem*” which means no person shall be judged without fair hearing. It puts emphasis on the fact that law and procedure which is followed should be just, fair and reasonable and the same has been recognized by the Apex Court in catena of judgments including one *A.S. Motors Private Limited vs. Union of India, (2013) 10 SCC 114* which has been relied upon by



the petitioners wherein it was discussed in detail. Relevant paragraph of the judgment is reproduced as under:-

“8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the Tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only-some of the decisions on the subject which should in our opinion suffice.”

08. The Division Bench of this Court in ***Ultratech Cement vs. State of Madhya Pradesh*** (W.P. No. 617/2023, Order dated 19.01.2023) which has also been relied upon by the petitioners runs as under:-

“Admittedly, as per Section 75(4) of the Act, personal hearing is mandatory before passing any adverse order against the assessee. In the circumstances, we see no reason why we should wait for the respondents to file the reply and prolong



the agony of the petitioner and also waste precious judicial time. If the Assessing Officer had only considered the file properly and dealt with the reply filed by the petitioner, then the need for the petitioner to approach this Court would not have arisen. In view of the above, the order dated 23/09/2022 is quashed and is hereby set aside. A different Assessing Officer other than the officer, who has passed the impugned order dated 23/09/2022 shall consider the reply as well as afford opportunity of hearing to the petitioner and, thereafter, pass the order in accordance with law, within a period of eight weeks from the date of receipt of the order.”

09. In ***Technosys Security System (P) Ltd. (supra)***, this Court has elaborated on the provisions under Section 75(4) of MPGST Act. The relevant paras 11 to 17 are reproduced as under:-

“11. Before dealing with rival contentions, it is apposite to quote Section 75 (4) of GST Act which reads as under:-

“(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.”

The relevant portion of DRC-01 is reproduced for ready reference:-

“Details of personal hearing etc ...

Sl. No.	Description	Particulars
1	Section under which show cause notice/statement is issued	73
2	Date by which reply has to be submitted	07/11/2022
3	Date of personal hearing	NA
4	Time of personal hearing	NA
5	Venue where personal hearing will be held	NA



12. A plain reading of sub-section 4 of Section 75 of the Act makes it crystal clear that “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.

13. This is trite that when language of statute is plain and unambiguous, it should be given effect to irrespective of its consequences. (See: *Nelson Motis Vs. Union of India (1992) 4 SCC 711*).

14. 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 like cloudless sky 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. We find support in our view by the Division Bench judgment of Allahabad High Court in *M/s. BL Pahariya Medical Store* (supra).

15. The ancillary question springs up from the argument of learned Government Advocate for the State whether the expression ‘opportunity of hearing’ is fulfilled if reply to show cause notice is received. We find substance in the arguments of learned counsel for the petitioners 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. Thus, we are unable to persuade ourselves with the line of argument of learned Government Advocate that ‘opportunity of



hearing’ does not include the opportunity of ‘personal hearing’.

16. In the instant case whether or not the petitioners have specifically asked for personal hearing, fact remains that the adverse decision was contemplated against the petitioners. In that event, it was obligatory and mandatory on the part of respondents to provide the petitioners opportunity of personal hearing. Admittedly, no opportunity of personal hearing has been provided in both the matters. Resultantly, the decision making process adopted by the respondents is vitiated and runs contrary to the principles of natural justice and statutory requirement of sub-section 4 of Section 75 of GST Act. (See: *Graziano Trasmissioni India Pvt. Ltd.* (supra).

17. As a result, the impugned proceedings after the stage of reply of show cause notices, in both the cases are set-aside. The respondents shall provide opportunity of hearing to the petitioners in both the cases by some other officer than the officer who has issued the show cause notice (c) Judgment of *Madhya Pradesh High Court in Ultratech Cement Ltd.* (supra).”

10. In the light of aforesaid, we are of the considered view that the authority has committed apparent error of law in not affording opportunity of personal hearing as statutorily provided under Section 75(4) of the MPGST Act which vitiates the proceedings. Hence, these petitions succeed and are hereby allowed. The impugned order dated 09.06.2023 passed by the respondent No. 3 is hereby quashed. Cases are remanded back to the authority for deciding afresh after affording opportunity of personal hearing to the petitioners.



11. Accordingly, these petitions are allowed and disposed of to the extent herein-above indicated. Let a copy of this order be kept in the record of connected petition.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

Soumya