in the State of Uttar Pradesh, rendering the entire class of dealers remediless under the Act, 2017 from availing statutory remedy of appeal under Section 112 of the Act, 2017, we are of the view that under the facts and circumstances and prevailing situation, the matter with regard to the following questions are referred to Larger Bench:-

(i) Whether by interim order dated 04.03.2021 in PIL CIVIL No.6024 of 2021 (Awadh Bar Association High Court, Lko Thru Gen.Secy. & Anr. vs. U.O.I.Thru Secy. Finance Ministry, New Delhi & Ors.), directing for not establishing GST Appellate Tribunal for State of Uttar Pradesh without leave of the court, could be passed in conflict with the final judgment dated 09.02.2021 in Writ Tax No.655 of 2018 passed by the Division Bench?

(ii) Whether under the facts and circumstances of the case and in the interest of dealers in State of Uttar Pradesh under the CGST Act/ U.P.GST Act, 2017, a direction needs to be issued immediately to the respondent No.4 to notify the State Bench and Area Benches of GST Appellate Tribunal in the State of Uttar Pradesh, within a time bound period so that persons/ dealers may avail statutory remedy of appeal under Section 112 of the CGST Act/ U.P. GST Act, 2017 and they may not suffer further?

(iii) Establishment of the State Bench of GST Appellate Tribunal at Prayagraj and its four Area Benches in the State of Uttar Pradesh in terms of the final judgment of the Division Bench dated 09.02.2021 in Writ Tax No.655 of 2018 (M/s Torque Pharmaceuticals Pvt. Ltd. vs. Union of India and 5 others) and other 29 connected writ petitions?

22. Let this order alongwith the records of the writ petition be placed before Hon'ble the Chief Justice for constitution of a Larger Bench so that people in the State of Uttar Pradesh having right to avail remedy of appeal under Section 112 of the CGST/ U.P. GST Act, 2017 may avail the statutory remedy and may not remain remediless.

(2022)03ILR A787
ORIGINAI JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2022

BEFORE
THE HON'BLE SURYA PRAKASH KESARWANI, J.
THE HON'BLE JAYANT BANERJI, J.

Writ Tax No. 1029 of 2021

Bharat Mint & Allied Chemicals, Badaun
...Petitioner
Versus
Commissioner Commercial Tax & Ors.
...Respondents

Counsel for the Petitioner:
Sri Abhinav Mehrotra, Sr Satya Vrata Mehrotra

Counsel for the Respondents:
C.S.C., A.S.G.I.

(A) Tax Law – Constitution of India,1950 - Article 226, - Central Goods and Service Tax Act, 2017 -U.P. Goods & Service Tax Act, 2017 – Sections 74, 75(4) & 107 - Validity of impugned assessment order – imposing demand of Tax, interest & penalty without affording opportunity of hearing to the Assesse – writ petition – patent breach of principle of natural justice – impugned order quashed with cost of Rs. 10,000/- matter remitted back to proceed afresh in accordance with law, after affording opportunity of hearing. (Para – 9, 17, 18, 19)

(B) Tax Law – Constitution of India, 1950 - Article 226, - Central Goods & Service Tax Act, 2017/U.P. Goods and Service Tax Act, 2017 – Sections 74, 75(4) & 107- Writ Petition - **Validity of impugned assessment order on the ground of breach of principle of natural justice – objection taken counter - alternative remedy – it is settled law that alternative remedy is not a complete bar to entertain a writ petition U/A 226 – writ petition allowed with cost with direction to Commissioner Commercial Tax U.P. through Registrar General – to ensure & follow the principles of nature justice in the St. of U.P. by the Assessing Authorities**.(Para – 13, 15, 20)

Writ Petition Allowed. (E-11)

List of Cases cited: -`

1. U.O.I. & ors. Vs M/s. Jesus Sales Corporation AIR 1996 SC 1509

2. Himmatlal Harilal Mehta Vs St. of M.P., AIR 1954 SC 403,

3. Collector of Customs Vs Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506,

4. Collector Of Customs & Excise, Cochin & ors. Vs A. S. Bava, AIR 1968 SC 13,

5. M.P. St. Agro Industries Development Corpn. Ltd. & anr. Vs Jahan Khan (2007) 10 SCC 88,

6. Dhampur Sugar Mills Ltd. Vs St. of U.P. & ors. (2007) 8 SCC 338,

7. BCPP Mazdoor Sangh Vs NTPC (2007) 14 SCC 234.

8. Rajasthan St. Electricity Board Vs U.O.I., (2008) 5 SCC 632,

9. Mumtaz Post Graduate Degree College Vs University of Lucknow, 6 (2009) 2 SCC 630,

10. Godrej Sara Lee Ltd. Vs Assistant Commissioner (AA), (2009) 14 SCC 338,

11. U.O.I. Vs Mangal Textile Mills (I) (P) Ltd., (2010) 14 SCC 553,

12. U.O.I. Vs Tantia Construction (P) Ltd., (2011) 5 SCC 697,

13. Southern Electricity Supply Co. of Orissa Ltd. Vs Sri Seetaram Rice Mill, (2012) 2 SCC 108,

14. St. of M.P. Vs Sanjay Nagaich (2013) 7 SCC 25,

15. St. of H.P. Vs Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499,

16. Star Paper Mills Ltd. Vs St. of U.P. & ors., JT (2006) 12 SC 92,

17. State of Tripura Vs Manoranjan Chakraborty, (2001) 10 SCC 740,

18. Paradip Port Trust vs Sales Tax Officer and Ors. (1998) 4 SCC 90,

19. Feldohf Auto & Gas Industries Ltd. Vs U.O.I. (1998) 9 SCC 710,

20. Whirlpool Corporation Vs Registrar of Trademarks (1998) 8 SCC 1;

21. Guruvayur Devasworn Managing Committee Vs C.K. Rajan (2003) 7 SCC 546,

22. Siemens Ltd. Vs St. of Mah.(2006) 12 SCC 33,

23. Kaikhosrou (Chick) Kavasji Framji of Indian Inhabitant Vs U.O.I. (2019) 20 SCC 705,

24. M/s Shree Bhawani Paper Mills Ltd. Vs St. of U.P. & Another (Writ Tax No. 255/2012, order dt. 10.09.2015),

25. M/s. Rapti Commissions Agency Vs U.O.I. (2010) 1 AllLJ. 710,

26. Oudh Sugar Mill Vs St. of U.P. (2015) 3 AllLJ 774 (para 27).

(Delivered by Hon'ble Surya Prakash Kesarwani, J.
&
Hon'ble Jayant Banerji, J.)

1. Heard Sri Abhinav Mehrotra, learned counsel for the petitioner and

learned standing counsel for the State - respondents.

2. This writ petition has been filed praying for the following relief:

"1. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of CERTIORARI, calling for the Record of proceedings from Revenue and to thereafter be further pleased to set-aside and quash the IMPUGNED Order of Adjudication Dt. 09.11.2021 [ANNEXURE NO.7] and connected demand of tax which is made is gross violation of the principles of natural Justice; NO oral hearing in the matter was afforded to Petitioner, adverse material has not been confronted to Petitioner resulting in a most UNFAIR TRIAL.

2. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of CERTIORARI to set aside and quash the IMPUGNED Order of Adjudication Dt. 09.11.2021 which is made is gross disregard to Judicial Discipline and without meeting the mandate of Law as contained under Section 74(2) of the GST Act.

3. The Hon'ble Court may be pleased to issue a writ, order or direction in the nature of MANDAMUS commanding Revenue authorities to reconsider the case of the Petitioner, lawfully and in good-faith, in the light of submissions filed by Petitioner, and with supplying of relief upon documents and after affording due and proper opportunity of hearing."

Submissions

3. Learned counsel for the petitioner submits that the impugned assessment order creating demand of tax, interest and penalty, has been passed without affording opportunity of hearing contemplated in Section 75(4) of the Central Goods and Services Tax, 2017/ U.P. Goods and Services Tax, 2017 (hereinafter referred to as "the Act 2017") and thus, the impugned order being patently in breach of principles of natural justice, is unsustainable and deserves to be quashed.

4. Learned standing counsel submits that the petitioner has an alternative remedy of appeal under Section 107 of the Act, 2017. Therefore, the writ petition is not maintainable.

Discussion & Findings

5. We have carefully considered the submissions of learned counsel for the parties.

Question

The two question involved in this writ petition are as under :-

(i) Whether opportunity of personal hearing is mandatory under Section 75(4) of the CGST/UPGST Act 2017 ?

(ii) Whether under the facts and circumstances of the case the impugned adjudication order has been passed in breach of principle of natural justice and consequently it deserves to be quashed in exercise of powers conferred under Article 226 of the Constitution of India ?

6. We have perused the show cause notice dated 09.09.2021 in which it has been mentioned as under:

"You may appear before the undersigned for personal hearing either in

person or through representative for representing your case on the date, time and venue, if mentioned in the table below."

7. In the table below the aforementioned lines, date, time and venue of personal hearing has not been mentioned. Section 75(4) of the Act, 2017 provides that opportunity of personal 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.

8 . Section 75(4) of the Act, 2017 reads as under:

"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."**

9. From perusal of Section 75(4) of the Act, 2017 it is evident that opportunity of hearing has to be granted by authorities under the Act, 2017 where either a request is received from the person chargeable with tax or penalty for opportunity of hearing or where any adverse decision is contemplated against such person. Thus, where an adverse decision is contemplated against the person, such a person even need not to request for opportunity of personal hearing and it is mandatory for the authority concerned to afford opportunity of personal hearing before passing an order adverse to such person.

10. In the counter affidavit the respondents have taken the stand that no opportunity of hearing is required before passing the assessment order. In support of their contention the respondents have relied upon the judgment of Hon'ble Supreme Court in **Union of India and Others Vs. M/s.Jesus Sales Corporation AIR 1996 SC 1509**. Perusal of the judgment in the case of **M/s. Jesus Sales Corporation (supra)** shows that the observation was made by Hon'ble Supreme Court while interpreting 3rd proviso to Section 4 M(1) of the Imports and Exports (Control) Act 1947, which is reproduced below :

"Provided also that, where the Appellate authority is of opinion that the deposit to be made will cause undue hardship to the appellant, it may, at its discretion, dispense with such deposit either unconditionally or subject to such conditions as it may impose."

11. The aforequoted 3rd proviso of Section 4 M (1) of the Act 1947 does not contemplate any opportunity of personal hearing in contrast to the provisions of Section 75(4) of the CGST/UPGST Act, 2017 which specifically mandates for opportunity of hearing before passing the order. The counter affidavit has been filed by an Officer of the rank of Joint Commissioner, Corporate Circle Commercial Tax, Bareilly who has either not read the aforesaid judgment of Hon'ble Supreme Court or was not able to understand it and in a casual manner the counter affidavit has been filed in complete disregard to the statutory mandate of Section 75(4) of the Act 2017.

12. It has also been admitted in the counter affidavit that except permitting the petitioner to reply to the show cause notice, opportunity of personal hearing has not been afforded to the petitioner. Thus the legislative mandate of Section 75(4) of the Act to the authorities to afford opportunity

of hearing to the assessee i.e. to follow principles of natural justice, has been completely violated by the respondents while passing the impugned order.

13. **The stand taken by the respondents in the counter affidavit that the writ petition is not maintainable as the petitioner has an alternative remedy of appeal under Section 107 of the Act, can also not be accepted inasmuch as it is settled law that availability of alternative remedy is not a complete bar to entertain a writ petition under Section 226 of the Constitution of India.** Certain exceptions have been carved out by Hon'ble Supreme Court that a writ petition under Article 226 of the Constitution of India may be entertained even there is an alternative remedy. One of the principle in this regard is that if the order impugned has been passed in gross violation of principles of natural justice. It is admitted case of the respondents that no opportunity of personal hearing, as contemplated under Section 75(4) of the Act, 2017, was afforded to the petitioner before passing the impugned order.

14. During the course of hearing of this writ petition, learned standing counsel has produced before us a photo stat copy of the order of the Assessing Authority relating to the impugned order and perusal thereof shows that no opportunity of hearing as contemplated under Section 75(4) of the Act, 2017 was not afforded to the petitioner. Thus, there being patent breach of principles of natural justice, the present writ petition is maintainable against the impugned order.

15. Article 226 of the Constitution of India confers very vide powers on High Courts to issue writs but this power is discretionary and the High Court may refuse to exercise the discretion if it is satisfied that the aggrieved person has adequate or suitable remedy elsewhere. It is a rule of discretion and not rule of compulsion or the rule of law. Even though there may be an alternative remedy, yet the High Court may entertain a writ petition depending upon facts of each case. It is neither possible nor desirable to lay down inflexible rule to be applied rigidly for entertaining a writ petition. Some exceptions to the rule of alternative remedy as settled by Hon'ble Supreme Court are as under:-

(i) Where there is complete **lack of jurisdiction** in the officer or authority to take the action or to pass the order impugned.

(ii) Where **vires of an Act, Rules**, Notification or any of its provisions **has been challenged.**

(iii) Where an order prejudicial to the writ petitioner has been passed in **total violation of principles of natural justice.**

(iv) Where **enforcement of any fundamental right** is sought by the petitioner.

(v) Where **procedure required for decision has not been adopted.**

(vi) Where **Tax is levied without authority of law.**

(vii) Where decision is an abuse of process of law.

(viii) Where **palpable injustice shall be caused** to the petitioner, if he is forced to adopt remedies under the statute

for enforcement of any fundamental rights guaranteed under the Constitution of India.

(ix) Where **a decision or policy decision has already been taken by the Government** rendering the remedy of appeal to be an empty formality or futile attempt.

(x) Where there is no **factual dispute but merely a pure question of law or interpretation** is involved.

(xi) Where **show cause notice** has been issued with **preconceived or premeditated or closed mind.**

16. The above principles are supported by the law laid down by Hon'ble Supreme Court in the case of **Himmatlal Harilal Mehta v. State of Madhya Pradesh, AIR 1954 SC 403, Collector of Customs v. Ramchand Sobhraj Wadhwani, AIR 1961 SC 1506, Collector Of Customs & Excise ,Cochin & Ors. vs A. S. Bava, AIR 1968 SC 13, Dr. Smt. Kuntesh Gupta vs Management Of Hindu Kanya Mahavidyalaya, L.K. Verma v. HMT Ltd. and anr., (2006) 2 SCC 269, Paras 13 and 20, M.P. State Agro Industries Development Corpn. Ltd. & Anr. vs. Jahan Khan (2007) 10 SCC 88 para 12, Dhampur Sugar Mills Ltd. v. State of U.P. and others (2007) 8 SCC 338, BCPP Mazdoor Sangh Vs. NTPC (2007) 14 SCC 234 (para 19), Rajasthan State Electricity Board v. Union of India, (2008) 5 SCC 632 (para 3), Mumtaz Post Graduate Degree College Vs. University of Lucknow,(2009) 2 SCC 630 (para 22 and 23), Godrej Sara Lee Limited v. Assistant Commissioner (AA), (2009) 14 SCC 338. 14, Union of India v. Mangal Textile Mills (I) (P) Ltd., (2010) 14 SCC 553 (paras 6,7,10 and 12), Union of India v. Tantia Construction (P) Ltd., (2011) 5 SCC 697, Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108 (paras 79,80,81,82,86,87 and 88), State of M.P. Vs. Sanjay Nagaich (2013) 7 SCC 25 (para 34,35,38,39), State of H.P. vs. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499 (para 11 to 19), Star Paper Mills Ltd. Vs. State of U.P. and others, JT (2006) 12 SC 92, State of Tripura vs. Manoranjan Chakraborty, (2001) 10 SCC 740 para 4; Paradip Port Trust vs Sales Tax Officer and Ors. (1998) 4 SCC 90, Feldohf Auto & Gas Industries Ltd. Vs. Union of India (1998) 9 SCC 710; Isha Beebi Vs. Tax Recovery Officer (1976) 1 SCC 70 (para 5); Whirlpool Corporation Vs. Registrar of Trademarks (1998) 8 SCC 1; Guruvayur Devasworn Managing Committee Vs C.K. Rajan (2003) 7 SCC 546 (para 67, 68), Oryx Fisheries Pvt. Ltd. Vs. Union of India & Others (2010)13 SCC 427 (Paras 27 to 38), Mangilal Vs. State of M.P. (1994) 4 SCC 564 (Para 6), Siemens Ltd. VS. State of Maharashtra (2006) 12 SCC 33 (para 9 & 11), Kaikhosrou (Chick) Kavasji Framji of Indian Inhabitant Vs. Union of India (2019) 20 SCC 705 (para 59) and judgments of this Court in Writ Tax No. 255 of 2012 (M/s Shree Bhawani Paper Mills Ltd. Vs. State Of U.P. and Another) decided on 10.09.2015, M/s. Rapti Commissions Agency Vs. Union of India (2010) 1 AllLJ. 710 :(2009) 244 ELT 8 and Oudh Sugar Mill Vs. State of U.P. (2015) 3 AllLJ 774 (para 27).**

17. For all the reasons aforestated, the i**mpugned order dated 9.11.2021** under Section 74 of the Act for the **tax period April (year 2019-20)** can not be sustained and is **hereby quashed.**

18. Liberty is granted to the respondents to pass an order afresh in

accordance with law, after affording opportunity of personal hearing to the petitioner.

19. **Writ petition is allowed to the extent indicated above with cost of Rs.10,000/-.**

20. A copy of this order be sent by the Registrar General of this Court to the Commissioner, Commercial Tax U.P. Lucknow who shall ensure that principles of natural justice as contemplated under Section 75(4) of the CGST/UPGST Act 2017 be followed by Proper Officers/Assessing Authorities in the State of Uttar Pradesh.

(2022)03ILR A793
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.03.2022

BEFORE

THE HON'BLE DEVENDRA KUMAR UPADHYAYA, J.
HON'BLE SUBHASH VIDYARTHI, J.

Writ Tax No. 37 of 2022

Rochana Agarwal C/o Ved Prakash Agarwal ...Petitioner

Versus

Assistant Commissioner of Income Tax, Sitapur & Ors. ...Respondents

Counsel for the Petitioner:
Surangama Sharma

Counsel for the Respondents:
Manish Misra, A.S.G.I., Dr. Ravi Kumar Mishra

Civil Law – Constitution of India, 1950 - Article 226, - Income Tax Act, 1961 - Sections 10(38), 133(6), 143, 147, 148 & 151 - Validity of Notice U/s 148 of Act, 1961 as well as order passed by ACIT rejecting her objections against initiation of re-assessment proceedings – writ petition – scope of power of judicial review while scrutinizing a notice issued U/s 148 of Act, - Section 147 provides Re-assessment can be initiated only if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year – in petitioner's case Assessing officer has gone through the income tax return and other related documents of the Assesse and has observed that he Assesse is a beneficiary of receiving bogus entries which is believable – as such no case is made out to interfere – sufficiency or correctness of the material cannot be considered at stage - accordingly writ petition dismissed. (Para – 24, 26, 27, 28,)

Writ Petition Dismissed. (E-11)

List of Cases cited: -

1. Raymond woolen Mills Ltd. Versus I.T.O., (1999) 236 ITR 36 (SC)

2. Raymond Woollen Mills Ltd. Vs ITO, (2008) 14 SCC 218

3. CIT Vs Techspan India (P) Ltd., (2018) 6 SCC 685,

4. Indra Prastha Chemicals Pvt. Ltd. & ors. Vr. CIT & another, 2004 SCC OnLine All 2133.

5. Phool Chand Bajrang Lal Vs ITO, (1993) 4 SCC 77

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Suyash Agrawal and Ms. Surangama Sharma, learned counsel for the petitioner and Shri Manish Misra, learned counsel for the respondents.

2. By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the