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HIGH COURT OF CHHATTISGARH, BILASPUR

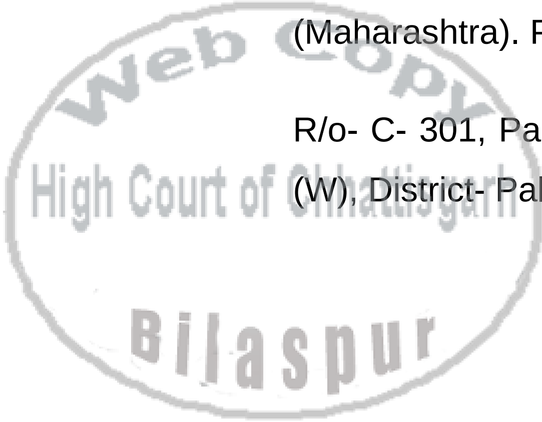
WA No. 172 of 2024

Mahindra & Mahindra Limited Registered Address:

1, Chawla Tower, Beside Bottle House, Shankar Nagar, Raipur, District Raipur, Cg Pin Code- 492001

Through its Authorised Representative: Shri Niketan V. Patil, S/o Shri Vasant Vithobha Patil, aged about 59 years,

Presently Posted As- Head- GST (North, East And Central Zones) Mahindra & Mahindara Limited, Registered Address- Farm Division, K Shed 2, Gate No. 2, Akurli Road, Kandivali (E), Mumbai (Maharashtra). Pin Code- 400101



R/o- C- 301, Parikshit CHS, Premium Park, Agashi Road, Bolinj Virar (W), District- Palghar (Maharashtra) Pin Code- 401303.

---- Appellant

Versus

1. Union of India through its Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi Pin Code- 110001.

2. State of Chhattisgarh through its- Secretary, Department of Finance, Government of Chhattisgarh, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, Raipur, District Raipur, C.G. Pin Code- 492002.

3. Central Board of Indirect Taxes and Customs through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi Pin Code- 110001.

4. Joint Commissioner of State Tax Raipur- 8, Raipur Division- 2, Atal Nagar, Nawa Raipur, Raipur, District Raipur, C.G. Pin Code- 492002.

---- Respondents

For Appellant	:	Mr. Bharat Raichandani, Advocate with Mr. K. Rohan, Advocate
For Respondent No. 1	:	Mr. Ramakant Mishra, D.S.G. with Ms. Shweta Rai, Advocate
For Respondent No. 2 & 4	:	Mr. Prafull N. Bharat, Advocate General
For Respondent No. 3	:	Mr. Manish Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board

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Per Goutam Bhaduri, Judge

10.04.2024

Heard.

1. The present appeal is against the Order dated 21.03.2024 passed in Writ Petition (Tax) No. 42 of 2024 (Mahindra and Mahindra Limited v. Union of India & Others), by the learned Single Judge, whereby, the appellant has been non-suited on the ground of alternate remedy.

2. According to the appellant, who is regular assessee, he was served with a notice under Section 73 (1) of the Central Goods and Services Tax Act, 2017 for a contemplated tax, not paid or short paid on 29.09.2023 (Annexure-P/8). According to the appellant, the last date for reply was fixed on 30.10.2023 and the

appellant sought for extension of such time by Annexure-P/10 on 11.10.2023, i.e. reply within the prescribed timeline.

3. The submission of the appellant is that before the filing of the reply since date of personal hearing was fixed, under those circumstances, the extension of time was sought for. However, eventually, the order dated 29.12.2023 was passed. It is contended on behalf of the appellant that in a manner of this nature, before imposition of liability, sub-section 9 of Section 73 contemplates that the officer shall after considering the representation shall issue the order and Section 75 (4) mandates that opportunity of hearing shall be granted if the sufficient cause is shown and where any adverse decision is contemplated against the assessee. It is submitted that adverse order has been passed without giving any opportunity of hearing to the appellant, therefore, the rules of natural justice were defeated. The counsel placed his reliance on the decision of the Supreme Court in the matter of *Kalpraj Dharamshi and another v. Kotak Investment Advisors Limited* reported in *2021 10 SCC 401* and submits that in the cases of the like nature when the principles of natural justice has been given a go bye, the party can be free to invoke the jurisdiction under Article 226 of the Constitution of India, therefore, the order of learned Single Bench is bad in law.

It is further submitted that Section 75 (5) further provides the manner of hearing which is to be granted during the

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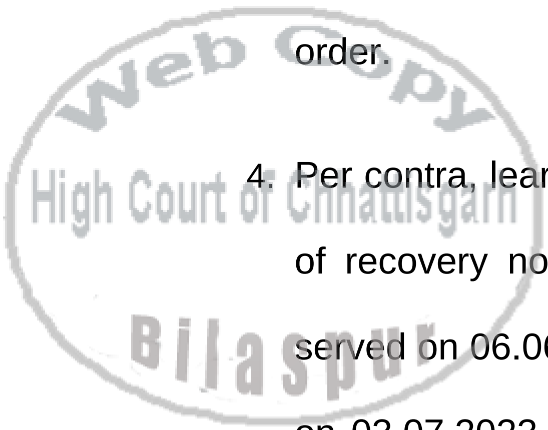
proceeding and three hearings are statutory under sub-section 5 of Section 75 of CGST Act. He placed his reliance in the judgment passed by the High Court of Judicature at Bombay in the matter of *Fino Paytech Limited v. Union of India, in Writ Petition No. 8965 of 2023* and the judgment of High Court of Allahabad, in the matter of *MS KEC International Limited v. Union of India and three others*, reported in *2024 (2) TMI 359*. He submits therefore, the only prayer before this Court that the order dated 29.12.2023, be set aside and the appellant assessee be heard by opportunity of hearing before passing any adverse order.



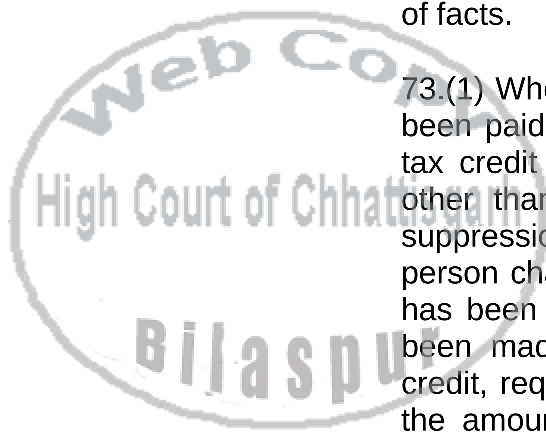
4. Per contra, learned Advocate General would submit that demand of recovery notice under Section 73 (1) of C.G.S.T. Act, was served on 06.06.2023 by Annexure-P/6 to which a reply was filed on 03.07.2023. He would submit that the reading of Section 75 (4) of C.G.S.T Act, do not contemplate the opportunity of hearing to be given at every stage and the order would reflect that on date when the personal hearing was given on 11.10.2023 and 25.10.2023, no representative of the appellant had appeared. He would submit that in such case there is no violation of Section 75 (4) of the C.G.S.T. Act and otherwise the order of the learned Single Bench only delegated the parties to file an appeal and in order to avoid the filing of appeal to make statutory deposit which is mandatory, this route has been adopted by the appellant.

5. We have heard the learned counsel for the parties.

6. Before we venture into the issue as to how the order was culminated, it would be apt to refer the relevant Section of Central Goods and Service Tax Act.

7. Section 73 sub-section 1, which pertains to demand and recovery is reproduced hereunder.

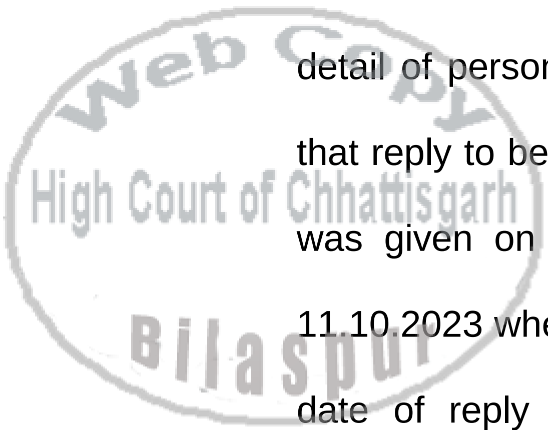
> THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
>
> Sec 73-Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.
>
> 73.(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.



8. Reading of this Section would show that the revenue would be within its power to issue the notice, that when tax has not been paid or short paid or erroneously refunded or some input tax credit has been wrongly availed or utilized other than a reason of fraud or willful misstatement, the notice would be under Section 73 sub-section (10) of CGST Act, as the limitation has been imposed of three years, while in cases of fraud it is covered under Section 74 wherein the limitation is five years.

9. Sub-Section 9 of Section 73 of the CGST Act, contemplates that the officer after considering the representation, if any made by person chargeable with tax shall determine the amount of tax in the manner contemplated under Sub-Section 9 of CGST Act. Since the notice was issued to the appellant under Section 73 of the CGST Act, therefore, according to sub-section 9 of CGST Act, the representation of appellant was required to be considered.

10. In the instant case, the show cause was served to the appellant on 29.09.2023 by Annexure-P/8 wherein, under the head of detail of personal hearing and due date to file reply was stated that reply to be filed by 30.10.2023 and date of personal hearing was given on 12.10.2023. A letter was filed by appellant on 11.10.2023 wherein, it was prayed by the appellant that since the date of reply was on 30.10.2023 and the personal hearing before such date is on 20.10.2023, further time was sought for final submission within the prescribed timeline and the adjournment was sought for. Further extension was sought for on 25.10.2023 by the appellant vide Annexure-P/11 and eventually the reply was filed on 15.11.2023 and in such reply it was reiterated that the appellant since has applied for adjournment for personal hearing and suitable date was sought for hearing before the issue is decided. According to the appellant that such personal hearing was not given and on 29.12.2023, the orders were passed which was under challenge under Article 226 of the



Constitution, before the learned Single Bench.

11. Section 75 sub-section 4 and 5 of the CGST Act, which covers the general provision relating to determination of tax contemplates that opportunity of hearing shall be granted where the request is received in writing and sub-section 5 contemplates that the adjournment can be given with a capping of three dates. For sake of brevity sub-sections (4) and (5), which are relevant for adjudication are reproduced hereunder;

> THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
>
> Sec 75-General provisions relating to determination of tax.
>
> 75.(1) xxx
>
> (2) xxx
>
> (3) xxx
>
> (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.
>
> (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.
>
> (6) xxx

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12. The submission of the State/Revenue is that as per Section 75 sub-Section 4 of the CGST Act, the date of hearing was already given on 11.10.2023 and 25.10.2023, therefore, the mandate of Section 75 (4) stands complied. We are not in agreement to that submission as the opportunity of hearing when is contemplated under the statute, it has to be comprehensive and it cannot be

short-circuited. The show cause notice reflects that the date of reply was given on 30.10.2023 and before the personal hearing date is given, it would be about a superfluous and would defeat the actual intent of the legislation of giving an opportunity of hearing. It is not expected that before the reply is filed, an assessee can be heard and thereafter the reply is filed. It is against the normal procedure and is against the normal practice of the parties that personal hearing is preponed and the reply is subsequently filed. This is not the intent of provisions of sub-Sections (4) and (5) of Section 75.

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13. The Supreme Court has in number of occasion has held that the opportunity of hearing means granting real and meaningful opportunity and adequate time must given to prepare and present the defence. **Supreme Court in *Umanath Pandey v. State of UP* [2009] 12 SCC 40-43 has observed as under:**

> "notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. **Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated**. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him."

The Supreme Court in Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519 : 2015 SCC OnLine SC 489 at page 537 has

held as under:

> **“35.** From the aforesaid discussion, it becomes clear that the opportunity to provide hearing before making any decision was considered to be a basic requirement in the court proceeding. Later on, this principle was applied to other quasi-judicial authorities and other tribunals and ultimately it is now clearly laid down that even in the administrative actions, where the decision of the authority may result in civil consequences, a hearing before taking a decision is necessary.”

In article titled as Right To Hearing And Contracts of Service, (1972) 2 SCC J-9 it was observed that:

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> “The protection that the principle of *audi alteram partem* is designed to afford to an individual is in the nature of a right to a fair hearing. The principal characteristics of this right to a hearing are three, namely, (*i*) the right to be informed of the case one is to meet at the hearing, (*ii*) the right to have notice of the time and place of hearing, and (*iii*) a reasonable amount of time between the date of notice and the actual date of hearing so as to enable one to prepare his defence.”

Lord Hodson observed in *Ridge v. Baldwin, (1963) 2 All ER 66, 71: (1964) AC 40, 64*: that

> "No one, I think, disputes that three features of natural justice stand out, (*i*) the right to be heard by an unbiased tribunal, (*ii*) the right to have notice of charges of misconduct, and (*iii*) the right to be heard in answer to these charges.

14. Oral hearing has its own eminence in the adjudication process and is recognized as an important aspect of adjudication not

only in India but across several jurisdictions. *The Supreme Court in Automotive Tyre Manufacturers Assn. v. Designated Authority*, (2011) 2 SCC 258 : 2011 SCC OnLine SC 130 at page 296

> **83.** The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking afinal decision in the matter. **Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments**. Moreover, it was also observed in *Gullapalli* [AIR 1959 SC 308] , if one person hears and other decides, then personal hearing becomes an empty formality.

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The Supreme Court in United States Jack R. GOLDBERG, Commissioner of Social Services of the City of New York vs. John KELLY et al. (23.03.1970 - USSC) : MANU/USSC/0168/1970 held that

> "The opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.16 It is not enough that a welfare recipient may present his position to the decision maker in writing or second-hand through his caseworker. Written submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance. **Moreover, written submissions do not afford the flexibility of oral presentations; they The Supreme Court in United States Jack R. GOLDBERG,**

Commissioner of Social Services of the City of New York vs. John KELLY et al. (23.03.1970 - USSC) : MANU/USSC/0168/1970 held that do not permit the recipient to mold his argument to the issues the decision maker appears to regard as important. Particularly where credibility and veracity are at issue, as they must be in many termination proceedings, written submissions are a wholly unsatisfactory basis for decision. The second-hand presentation to the decisionmaker by the caseworker has its own deficiencies; **since the caseworker usually gathers the facts upon which the charge of ineligibility rests, the presentation of the recipient's side of the controversy cannot safely be left to him. Therefore a recipient must be allowed to state his position orally.** Informal procedures will suffice; in this context due process does not require a particular order of proof or mode of offering evidence. Cf. HEW Handbook, pt. IV, § 6400(a)."

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This US Judgment **R. GOLDBERG (Supra) was further referred by** Lord Bingham of House of Lords in case of Smith v Parole Board [2005] UKHL 1.

15. It is one of the established principles of Common Law that officials taking action of a judicial nature must give an adequate opportunity of being heard to a person against whom the action is proposed to be taken. The principle seeks to ensure fairness of procedure in the dealings between public authorities and the citizens and promotes fair play in such dealings. When the statute provides for procedure for hearing the Constitutional Courts are duty bound to uphold such procedure and must

ensure that meaningful opportunity of hearing must be provided.

16. In the given case without filing the reply, we are unable to understand how personal hearing can be justified. When the assessee is burdened with a tax liability, then the intent and the object of the statute are strictly to be complied with. Prima Facie, we, therefore, find that the sub-Section 4 of Section 75 of the CGST Act was completely shelved before the order dated 29.12.2023 was passed. The Supreme Court in *Kalpraj Dharamshi and another* (supra) has held that when the principles of natural justice has not been followed, the litigant would be entitled to invoke the jurisdiction of High Court under Article 226 of the Constitution of India. For the sake of brevity, Para 75 is relevant here and quoted below:

> "75. It has been clearly held, that when the proceedings invoked before a statutory authority are dehors the jurisdiction or when they are in breach of principles of natural justice, the party would be entitled to invoke the jurisdiction of the High Court under Article 226 of the Constitution."

17. Therefore, in our considered view, we are not in agreement with the orders passed by the learned Single Bench and set aside the same.

18. Now coming back to the hearing, the judgments which has been relied on by counsel for the appellant i.e. *Fino Paytech Limited* (supra) and *MS KEC International Limited* (supra), also fall in the same line wherein, the High Courts have repeatedly held that when the statute contains a mandate of hearing which is

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synonym to natural justice, it cannot be given a go bye or can be made porous, therefore, the order dated 29.12.2023 wherein, it has been recorded that the personal hearing was given on 11.10.2023 and 25.10.2023 would amount to defeat the rules of natural justice and the object of the legislation. The order if is allowed to be maintained, it would amount to allow a script with flaws. Accordingly, the appellant would be entitled for personal hearing according to mandate of sub-Sections (4) and (5) of Section 75 of the CGST Act.

19. The parties may appear before the Respondent No. 4 i.e. Joint Commissioner of State Tax on 08.05.2024.

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20. Accordingly, the appeal is allowed.

Sd/-	Sd/-
(**Goutam Bhaduri**) JUDGE	(**Radhakishan Agrawal**) JUDGE

Saurabh