

Court No. - 39**Case :-** WRIT TAX No. - 63 of 2024**Petitioner :-** Ms Kec International Limited**Respondent :-** Union Of India And 3 Others**Counsel for Petitioner :-** Namit Kumar Sharma**Counsel for Respondent :-** A.S.G.I.,C.S.C.**Hon'ble Saumitra Dayal Singh,J.****Hon'ble Manjive Shukla,J.**

1. Heard Shri Bharat Raichandani (through VC) along with Shri Namit Kumar Sharma, learned counsel for the petitioner, Sri Ankur Agarwal, learned Standing Counsel for the State-revenue authorities and Shri Anant Kumar Tiwari, learned counsel for the Union of India.

2. Challenge has been raised to the order dated 22.11.2023 passed by Joint Commissioner (Corporate Circle), State Tax, Saharanpur, Headquarter-Muzaffarnagar referable to Rule 142(5) of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'Act, 2017') for the period January, 2021. By that order, the revenue authorities have reversed the refund earlier granted to the petitioner for the said period.

3. Short submission has been advanced by learned counsel for the petitioner. The impugned order was preceded by a solitary notice dated 16.10.2023. The date fixed for hearing was 16.11.2023. Though, it is undisputed to the revenue authorities that the petitioner had sought adjournment of two weeks by e-filing adjournment application dated 15.11.2023, the revenue authority has proceeded to reject that application on a perverse reasoning of repeated adjournment sought. Without affording any opportunity

of hearing and in complete denial of the petitioner's right to that under Section 75(4) of the Act, 2017, the impugned order has been passed only to deny the refund that is otherwise due to the petitioner.

4. While learned counsel for the Revenue has strenuously urged that the petitioner may avail statutory remedy of appeal against the order, on query put to him, he could not deny either the fact that the first date fixed in the proceeding was 16.11.2023 or the fact that the petitioner had filed adjournment application for the date fixed. These facts are borne out from the face of the record. The impugned order itself recites in its 3rd paragraph that adjournment application was uploaded by the petitioner on the portal. However, no reason has been ascribed to reject the same.

5. Section 75(4) of the Act, 2017 gives perfect right to the petitioner to be personally heard before any adverse order may be passed.

6. For the facts noted above, the impugned order cannot be sustained.

7. Since the statutorily incorporated right of natural justice has been violated for no good reason, we observe that alternate remedy that otherwise exists may not operate as a bar to entertain the present petition. Besides the fact that the petitioner has a right of hearing, rule of law also commends that obligation to provide such an opportunity be duly enforced on the revenue authorities as may not give rise to fruitless and wholly avoidable litigation as has arisen in the present petition.

8. Since the learned counsel for the Revenue has made a fair

statement, we do not propose to impose cost that otherwise is invited by the conduct offered by the revenue authorities.

9. Accordingly, the writ petition is **allowed**. The order dated 22.11.2023 is **set aside**. The matter is remitted to the respondent no. 3 to pass a fresh order after affording opportunity of hearing to the petitioner. It is further provided that the petitioner may file its detailed reply to the show cause notice within a period of two weeks from today. Thereupon the said authority may fix a proper date for hearing with at least 15 days notice in advance and pass appropriate order thereafter, as expeditiously as possible, preferably within a period of one month from the date of hearing.

Order Date :- 1.2.2024

SA

(Manjive Shukla, J.) (S.D. Singh, J.)