HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 12061 OF 2025 (T-RES)

BETWEEN:

M/S JSW STEEL LIMITED
1ST FLOOR, HR BUILDING,
PO VIDYANAGAR, TORANAGALLU BALLARI,
KARNATAKA – 583 275.
(REPRESENTED BY ITS AUTHORIZED SIGNATORY)
MR. MANI MANUEL,
AGED ABOUT 56 YEARS,
S/O LATE CV MANUEL,
DESIGNATED AS VICE PRESIDENT
CORPORATE AFFAIRS

...PETITIONER

(BY SRI. V. RAGHURAMAN, SENIOR ADVOCATE FOR
SRI. RAGHAVENDRA.C R.,ADVOCATE)

AND:

1. THE JOINT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE
TTMC BUILDING, ABOVE BMTC BUS STAND,
DOMALURU, OLD AIRPORT ROAD,
BANGALORE- 560 071.

2. DIRECTORATE GENERAL OF GST INTELLIGENCE, DELHI ZONAL UNIT,
MTNL BUILDING, 2ND FLOOR,
SECTOR-6, DWARKA,
NEW DELHI - 110 075.

...RESPONDENTS

(BY SRI. MADHUKAR M D.,ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER BEARING NO. SL. NO. 42/JC-3/B-EAST/2025 DATED 01.02.2025, ISSUED BY RESPONDENT NO. 1 ENCLOSED AS ANNEXURE-A FOR THE REASONS STATED IN THE GROUNDS.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner has sought for the following reliefs:-

> *(A) To issue writ or directions in the nature of Certiorari or any other writ or direction for quashing the Impugned Order bearing No.Sl.No.42/JC-3/B-East/2025 dated: 01.02.2025, issued by Respondent No.1 enclosed as Annexure 'A' for the reasons stated in the grounds.*
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> *(B) To issue writ or directions in the nature of Certiorari or any other writ of direction to Respondent No.1 to grant the opportunity of cross examination of the persons sought by the petitioner.*
>
> *AND*
>
> *(C) To issue order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the interest of justice and equity."*

2. The brief facts giving rise to the present petition are as under:-

The petitioner – JSW Steel Ltd., entered into an Memorandum of Understanding (MoU) with M/s.Larsen & Turbo Ltd., (L & T) for supply of various products viz., reinforcement bars,

plates, steels, round bars etc., under two financing schemes i.e., MRPA and non-MRPA. As per the MoU, based on the annual lifting done by LoP for certain prescribed products, L & T would be entitled to Turn Over Discounts (TOD) and under the MRPS scheme, L & T was eligible for credit period of 120 days from the date of Invoices with interest free credit period of 60 days, interest of 30 days inbuilt in the price and interest of balance 30 days to be adjusted against equivalent TOD. On 15.12.2022, the respondents initiated investigation against the petitioner and summons were issued to both representatives of the petitioner as well as representatives of L & T *interalia* alleging that the petitioner was engaged in evasion of GST by adopting different methods / *modus operandi* in its day-to-day business and that there was a mismatch in the income reported in GSTR – 1 returns and tax discharged as per GSTR – 3B returns. In pursuance of the same, statements of both representatives of petitioner and representatives of respondents were obtained. Petitioner contended that the TOD amount was neither payable nor paid to L & T and interest amount was neither receivable nor received by the petitioner from L & T. On 03.07.2024 and 04.07.2024, petitioner submitted letters in this

regard and also stated that considering that L & T was an old and major customer, petitioner took a business call not to charge or collect any interest charges from L & T for delayed payment beyond 90 days.

2.1 On 02.08.2024, respondents issued the impugned show cause notice (SCN) in relation to various issues including transactions of petitioner with L & T demanding payment of GST from the petitioner. The petitioner submitted its reply dated 30.10.2024 to the impugned SCN, to which the respondents issued a corrigendum communicating transfer of adjudication, pursuant to which, they issued a personal hearing notice dated 19.12.2024 for appearance of the petitioner on 27.12.2024. On 24.12.2024, petitioner made a written request by submitting a letter for adjournment along with a request for examination / cross-examination of the representatives of L & T whose statements were recorded by the respondents. On 27.12.2024, the authorised representatives of the petitioner appeared for personal hearing and once again made a request for examination / cross-examination of representatives of L & T, pursuant to which, the respondents once

again issued a personal hearing notice dated 31.12.2024 calling upon the petitioner to appear on 15.01.2025.

2.2 The petitioner submitted a letter dated 13.01.2025 yet again requesting examination / cross-examination of the L & T representatives and reiterated the same during the course of personal hearing held on 15.01.2025 to the respondents. Further, on 21.01.2025, the petitioner made additional submissions including the request for examination / cross-examination of the L & T representatives. By the impugned order dated 01.02.2025, 1st respondent not only rejected / denied the request of the petitioner for cross-examination of the L & T representative but also confirmed the GST demand made against the petitioner together with penalty, interest etc., aggrieved by which, petitioner is before this Court by way of the present petition.

3. Heard learned Senior counsel for the petitioner and learned counsel for the respondents – revenue and perused the material on record.

4. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner submitted that the 1st respondent

committed an error in refusing to permit the petitioner to cross-examine the representatives of the L & T whose statement had been recorded by the respondents. It was submitted that it was very crucial and important to permit the petitioner to examine / cross-examine the L & T representatives especially when their statements were relied upon by the 1st respondent for the purpose of rejecting the claim of the petitioner by passing the impugned order and as such, it is necessary that the impugned order be set aside and the matter be remitted back to the 1st respondent for reconsideration afresh in accordance with law by permitting the petitioner to examine / cross-examine the said L & T representatives and to proceed further in accordance with law. In support of his submissions, learned Senior counsel for the petitioner placed reliance upon the following judgments:-

(i) Andaman Timber Industries vs. Commissioner of Central Excise – 2015 (324) ELT 641 (SC);

(ii) G-Tech Industries vs. Union of India – 2016(339) ELT 209 (P&H);

(iii) Nishad KU vs. Joint Commissioner Central Tax and Central Excise, Kochi – 2025 (171) taxmann.com 114 (Kerala);

(iv) The Joint Commissioner & others – Nishad KU – W.A.No.303/2025 dated 17.02.2025, [2025] 172 taxmann.com 557 (Kerala).

(v) Commissioner of Central Excise vs. Balajee Perfumes – (2017) (358) ELT 87.

5. Per contra, learned counsel for the respondents would support the impugned order and submit that there is no merit in the petition and that the same is liable to be dismissed. In support of his submissions, learned counsel placed reliance upon the following judgments:-

(i) Mohammed Muzamil vs. CBIC – W.P.No.18081/2020 dated 06.11.2020;

(ii) Surjeet Singh Chhabra vs. Union of India & Ors. – (1997) 1 SCC 508;

(iii) Telstar Travels Pvt. Ltd., vs. Enforcement Directorate – (2013) 9 SCC 549;

6. I have given my anxious consideration to the rival submissions and perused the material on record.

7. A perusal of the material on record will indicate that during the course of investigation, the respondents not only recorded the statements of the representatives of the petitioner but also the

statements of the L & T officials / representatives i.e., viz., Gorinder Paul Singh, Manikantan and N.Karthikraja. During the course of the impugned order, at paragraph-6, the said recording of statement of the L & T representatives have been referred to and the 1st respondent places reliance upon the said statement for the purpose of rejecting the claim of the petitioner and confirming / upholding the demand of GST made against the petitioner in the show cause notice. However, despite recording the repeated request of the petitioner to examine / cross-examine the L & T officials / representatives the 1st respondent declines / denies any opportunity in this regard to the petitioner by holding as under:-

> *" 20.16. During the personal hearing and in written reply, the noticees have requested for cross-examination of L&T representative. With regard to this, I find that the statement of representative of M/s. L&T was voluntarily given. Despite multiple opportunities given to M/s. JSW, they have not submitted the details of TOD paid/payable to M/s. L&T. Therefore, I don't find any necessity of Cross-Examination of L&T representative in this case, In this regard, I reply on the following judgments:*
>
> *The Hon'ble High Court of Telangana, in its judgment dated: 06.11.2020 in the case of Mr. Mohammed Muzzamil and Another vs. The CBIC in W.P.No.18081 OF 2020, on the basis of several judgment of the Hon'ble Supreme court, has*

held as follows: " Thus, there is no doubt that where a plea of violation of principles of natural justice by denying a party an opportunity to cross examine witnesses is raised in proceedings under he Customs Act, 1962 or similar legislation, the question of prejudice suffered to such party by such denial has to be gone into. If there is no prejudice caused by such denial, no relief can be granted to him.

From the contents of the Hon'ble Supreme Court's judgments referred to an relief upon in the said judgment of High Court, it may be seen that denial of opportunity for Cross Examinations has been upheld. Some of these judgment are given herein below;

The Hon'ble Supreme Court, in the case of Surjeet Singh Chhabra vs Union of India (Judgment dated: 25.10.1996) has held that " The Customs officials are not police officers. The confessions, though retracted, is an admission and binds the petitioner. So, there is no need to call panch witnesses fro examination and cross-examination by the petitioner."

b) The Hon'ble High Court of Telangana in the same judgment, has vide paragraph 33 has held that " in cases where there is a confession", denial of Cross-Examination is justified.

c) The Hon'ble High Court of Telangana in the same judgment, has vide paragraph 34, has observed that the Hon'ble Supreme court, in the case of M/s. Telestar Travels Pvt.Ltd., v Special Director of Enforcement has held that " Cross-Examination of witnesses would make no material

difference and failure to permit the party to cross-examination cannot be said to have caused any prejudice calling for reversal of the orders impugned by directing a Denova enquiry into the matter."

20.16.1 Thus, I deny the request of cross examination made by the noticee."

8. As can be seen from the aforesaid finding recorded by the 1st respondent, reliance is placed on the aforesaid judgment of the Apex Court and Telangana High Court in order to hold that there was no necessity for the petitioner to cross-examine / examine the L & T representatives and refusal to permit the petitioner to do so would not cause any prejudice to the petitioner, whose request for examination / cross-examination was denied by the 1st respondent.

9. In my considered opinion, the reasoning and findings recorded by the 1st respondent while declining / refusing the request of the petitioner for cross-examination of the L & T representatives are wholly erroneous, unsound and contrary to facts and law inasmuch, as the said statements of the aforesaid L & T representatives have not only been relied upon but also made the basis by the 1st respondent to uphold / confirm the demand of

payment of GST made in the show cause notice against the petitioner; it follows therefrom that the said statements of the L & T representatives are not only relevant material and germane for the purpose of adjudication of the issues on controversy between the parties, principles of natural justice as well as equity, justice and fair play would demand / warrant an opportunity to be provided to the petitioner to examine / cross-examine the L & T representatives in relation to their statements recorded by the respondents which were sought to be relied upon by the 1st respondent for the purpose of passing the impugned order; in other words, having undisputedly recorded the statement of not only the officials of the petitioner but also the L & T representatives in the backdrop of the subject matter of the impugned proceedings which relate to transactions between the petitioner and L & T, it was absolutely essential to provide an opportunity to the petitioner to examine / cross-examine the L&T officials whose statements were recorded by the respondents. Under these circumstances, denial of an opportunity in favour of the petitioner to cross-examine the L & T representatives tantamounts to not only violation of principles of natural justice but also deprival of the valuable right of cross-examination to the

petitioner and also contrary to principles of justice, equity and fair play particularly when the said statement of the said L & T representatives were relied upon by the 1st respondent in the impugned order, thereby establishing that denial of an opportunity to cross-examine has caused irretrievable prejudice and hardship to the petitioner and consequently, the impugned order deserves to be set aside and the matter remitted back to the 1st respondent for reconsideration afresh in accordance with law.

10. In ***Andaman Timber's case supra*****,** the Apex Court held as under:-

> ***" 3.*** *Insofar as the plea of the appellant that it was not allowed to cross-examine the dealers whose statements were relied upon by the adjudicating authority in passing the orders, the Tribunal rejected its plea in the following manner:*
>
> *"6. The plea of no cross-examination granted to the various dealers would not help the appellant's case since the examination of the dealers would not bring out any material which would not be in the possession of the appellant themselves to explain as to why their ex-factory prices remain static. Since we are not upholding and applying the ex-factory prices, as we find them contravened and not normal price as envisaged under Section 4(1), we find no reason to disturb the Commissioner's orders."*
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> ***4.*** *Challenging the aforesaid order, the present appeal is preferred by the appellant assessee.*

5. *We have heard Mr Kavin Gulati, learned Senior Counsel appearing for the assessee, and Mr K. Radhakrishnan, learned Senior Counsel who appeared for the Revenue.*

6. *According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.*

__7.__ As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the adjudicating authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject-matter of cross-examination. Therefore, it was not for the adjudicating authority to presuppose as to what could be the subject-matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came up before this Court in CCE v. Andaman Timber Industries Ltd. [CCE v. Andaman Timber Industries Ltd., (2005) 12 SCC 151] , order dated 17-3-2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

__8.__ In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the show-cause notice.

__9.__ We, thus, set aside the impugned as passed by the Tribunal and allow this appeal.

10. No costs."

11. In ***G.Tech Industries case supra*****,** the Pujab & Haryana Court held as under:

> ***" 15.*** *The rationale behind the above precaution contained in clause (b) of section 9D(1) is obvious. The statement, recorded during inquiry/investigation, by the Gazetted Central Excise Officer, has every chance of having been recorded under coercion or compulsion. It is a matter of common knowledge that, on many occasions, the DRI/DGCEI resorts to compulsion in order to extract confessional statements. It is obviously in order to neutralise this possibility that, before admitting such a statement in evidence, clause (b) of section 9D(1) mandates that the evidence of the witness has to be recorded before the adjudicating authority, as, in such an atmosphere, there would be no occasion for any trepidation on the part of the witness concerned.*
>
> ***16.*** *Clearly, therefore, the stage of relevance, in adjudication proceedings, of the statement, recorded before a Gazetted Central Excise Officer during inquiry or investigation, would arise only after the statement is admitted in evidence in accordance with the procedure prescribed in clause (b) of section 9D(1). The rigour of this procedure is exempted only in a case in which one or more of the handicaps referred to in clause (a) of section 9D(1) of the Act would apply. In view of this express stipulation in the Act, it is not open to any adjudicating authority to straightaway rely on the statement recorded during investigation/inquiry before the Gazetted Central Excise Officer, unless and until he can*

legitimately invoke clause (a) of section 9D(1). In all other cases, if he wants to rely on the said statement as relevant, for proving the truth of the contents thereof, he has to first admit the statement in evidence in accordance with clause (b) of section 9D(1). For this, he has to summon the person who had made the statement, examine him as witness before him in the adjudicating proceeding, and arrive at an opinion that, having regard to the circumstances of the case, the statement should be admitted in the interests of justice.

17. *In fact, section 138 of the Indian Evidence Act, 1872, clearly sets out the sequence of evidence, in which evidence-in-chief has to precede cross- examination, and cross-examination has to precede re-examination.*

18. *It is only, therefore,*

(i) after the person whose statement has already been recorded before a Gazetted Central Excise Officer is examined as a witness before the adjudicating authority, and

(ii) the adjudicating authority arrives at a conclusion, for reasons to be recorded in writing, that the statement deserves to be admitted in evidence,

that the question of offering the witness to the assessee, for cross- examination, can arise.

19. *Clearly, if this procedure, which is statutorily prescribed by plenary Parliamentary legislation, is not followed, it has to be regarded, that the Revenue has given up the said witnesses, so that the reliance by the Commissioner of Central Excise, on the said statements, has to be regarded as misguided, and the said statements have*

to be eschewed from consideration, as they would not be relevant for proving the truth of the contents thereof.

20. *Reliance may also usefully be placed on paragraph 16 of the judgment of the Allahabad High Court in CCE v. Parmarth Iron P. Ltd (2010) 250 ELT 514 (All), which, too, unequivocally expound the law thus:*

"If the Revenue chooses not to examine any witnesses in adjudication, their statements cannot be considered as evidence."

21. *That adjudicating authorities are bound by the general principles of evidence, stands affirmed in the judgment of the Supreme Court in Commissioner of Customs v. Bussa Overseas Properties Ltd. (2007) 216 ELT 659 (SC), which upheld the decision of the Tribunal in Bussa Overseas Properties Ltd. v. Commissioner of Customs (2001) 137 ELT 637 (Trib.-Mum).*

22. *It is clear, from a reading of the order-in-original dated April 4, 2016 supra, that respondent No. 2 has, in the said orders-in-original, placed extensive reliance on the statements, recorded during investigation under section 14 of the Act. He has not invoked clause (a) of sub-section (1) of section 9D of the Act, by holding that attendance of the makers of the said statements could not be obtained for any of the reasons contemplated by the said clause. That being so, it was not open to respondent No. 2 to rely on the said statements, without following the mandatory procedure contemplated by clause (b) of the said sub-section. The orders-in-original, dated April 4, 2016, having been passed in blatant violation of the mandatory procedure prescribed by*

section 9D of the Act, it has to be held that the said orders-in-original stand vitiated thereby."

12. In ***Balaji perfumes case supra*****,** the Apex Court held as under:-

> ***"12.*** *Two of the issues framed for determination by the CCE were as under :*
>
> *'(i) Whether the cross-examination should have been allowed and whether in absence thereof, the statement of such persons could be relied upon? and*
>
> *(ii) Whether further retraction on behalf of Mr. Varun Gupta, Mr. Suresh Rao and Mr. Avinash Baliga could be held to be valid?"*
>
> ***13.*** *In para 10.1 of the impugned Order-in-Original dated 25th March, 2008 the Commissioner recorded the fact that cross-examination had been sought of Mr. Pavan Prabhu, Mr. Avinash Baliga, Mr. Suresh Rao and Mr. H.S. Sooryanarayana. Further cross-examination of Mr. Abhay Gupta had been asked for on the ground that his statement, although in his own handwriting, appeared to be dictated. Further, it was not corroborated by any documentary evidence. Cross-examination was also sought of the panch witnesses Mr. Shiv Kumar and Mr. Md. Anwar as well as of Mr. Rakesh Garg, IO, DGCEI, New Delhi. The above request was declined by the CCE by referring the decision in, Jetmal Pithaji v. Assistant Collector of Customs, Bombay - AIR 1974 SC 699 = (S.C.) followed in* ***Jagdish Shankar Trivedi v. Commissioner of Customs*** *- . Reference was also made to the decision*

in Surjeet Singh Chhabra v. Union of India – 1997 (89) E.L.T. 646 (S.C.) where it was held that, not allowing of cross-examination was not violative of principles of natural justice even if such confession was retracted within six days. Reference was also made to the decision in ***Kanungo & Co. v. Collector of Customs****, Calcutta - (S.C.). On the other hand, on behalf of the respondent, reliance was placed on the decisions in Superintendent of Customs v. Banabhai Kailphabhai – 1995 (76) E.L.T. 508 (S.C.) and Jagmohan Singh Sawhney v. Collector of Customs – 1995 (75) E.L.T. 350 (Tri.-Delhi).*

14. *Accepting the case of the Department, the CCE justified the denial of cross-examination of its witnesses. The CCE further held that the retraction by Mr. Varun Gupta was by an affidavit dated 5th December, 2006 whereas the original statement was recorded on 30th January, 2006. Three others retracted their statements by filing affidavits. The Commissioner rejected all these affidavits on the ground that the statements made in the first instance were voluntary, while the affidavits appeared to have been given be under compulsion. Thereafter, the material documents seized were analyzed including the statements made (which were subsequently retracted) and on merits the allegations in the SCN were held to be proved. As a result, the CCE confirmed the demand of Rs. 3,73,39,131/- and penalty of an equal amount apart from personal penalty of Rs. 5 lakhs each on Mr. Pavan M. Prabhu, Mr. Avinash Baliga and Mr. Suresh Rao.*

15. *Against the above order, appeals were filed before the CESTAT by the respondent and the aforementioned persons. The said appeal were allowed by the CESTAT by the common impugned order dated 15th January, 2016.*

16. *In the impugned order, the CESTAT noted that the case of the Department against the respondent hinged on (a) Railway receipts; (b) diaries recovered from the premises of dealers/distributors; and c) on the basis of statements of Varun Gupta, Pawan M. Prabhu, Avinash M. Baliga and Suresh Rao. The CESTAT held that the statements given at the time of investigation were followed by their affidavits. However, the affidavits had not been examined by the CCE. Further, no cross-examination was granted. It was therefore held that the statements were themselves not reliable in the absence of corroboration. Reliance was placed on the decision of the CESTAT in M/s. Aswani & Co. [Final Order No. A/54559-54565/2014, dated 2nd December, 2014]. [2015 (327) E.L.T. 81 (Tribunal)]. It was further noticed that Mr. Ajay Gupta who was a witness was not examined and was not made a party to the case. It was accordingly held that the investigation conducted by the Department was not proper.*

17. *This Court has heard the submissions of Mr. Harpreet Singh, learned Senior Standing Counsel for the appellant and Mr. A.K. Prasad, learned counsel for the respondent.*

18. *The Court is required to examine if the impugned order of the CESTAT gives rise to any substantial question of law in this appeal under Section 35G of the CE Act.*

19. *It was submitted by Mr. Harpreet Singh, learned Senior Standing Counsel for the appellant that the retracted statements of the aforesaid persons might require corroboration but not in material particulars. According to him, as long as the material available on record provided a general corroboration of the retracted statements, that would be sufficient to sustain the SCNs issued to the respondent. Secondly, it was submitted that the retraction took place only when the cross-examination of the persons who gave statements in the course of investigation was denied and not earlier thereto. Therefore, the CCE was justified in ignoring such retraction.*

20. *On the other hand, Mr. A.K. Prasad, learned counsel appearing for the respondent pointed out that although the impugned order of the CESTAT in the respondent's case has been appealed against, no appeal has been filed against the three other noticees on whom penalty was levied and whose appeals had been allowed by the CESTAT by the same common impugned order. In other words, the Department was being selective. Secondly, he pointed out that there was no justification in denying cross-examination of the persons who gave statements against the respondent. It was a prerequisite of the principles of natural justice that the person against whom statements were made should be given an*

opportunity to test the veracity of such statements. That could be done only by way of cross-examination. The view taken by the CESTAT could not be said to be contrary to law. He submitted that in any event, the impugned order does not give rise to any substantial question of law.

21. *The Court has considered the above submissions. The Court is unable to find any justifiable reason for the Department to deny the respondent the opportunity of cross-examining the persons who made statements against the respondent during the course of the investigation. This was all the more necessary since the statements made by Mr. Varun Gupta and other noticees during investigation stood retracted by their subsequent affidavits. Unless the makers of the statements were not available for some reason, there was no justification to simply deny the right of cross-examination.*

22. *In this connection, it is necessary to refer to Section 9D(1)(a) of the CE, 1944 which incorporates the rule of natural justice. The relevant portion of the said provision reads thus :*

"(1) A statement made and signed by a person before any Central Excise Officer of a gazetted rank during the course of any inquiry or proceeding under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains -

(a) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be

obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable;"

23. *In a similar situation, this Court in its decision dated 2nd December, 2015 in CEAC No. 62/2014 (* ***Commissioner of Central Excise, Delhi-1 v. Vishnu & Co. Pvt. Ltd.) [2016 (332) E.L.T. 793 (Del****.)] upheld an the order of CESTAT that had set aside the adjudication order on the ground that it proceeded on the basis of the retracted statement of the persons who were not offered for cross-examination. It was observed in that case "where such statements are subsequently retracted or resiled from, it becomes necessary for the Department to produce other evidence which is of an independent nature which corroborates the retracted statements." In that case, the Commissioner had proceeded on the basis of the retracted statements of persons not offered for cross-examination. There again, it was contended by the department that the retraction made beyond 20 months after the initial statement, would have no effect in the eyes of law. The Court negated the above statements and held as under :*

> *"41. What the above submission overlooks is the 'reliability' of such statements. Once it is shown that the maker of such statement has in fact resiled from it, even if it is after a period of time, then it is no longer safe to rely upon it as a substantive piece of evidence. The question is not so much as to admissibility of such statement as much as it is about its 'reliability'. It is the latter requirement that warrants a judicial authority to seek, as a rule of prudence, some corroboration of such retracted statement by some other*

reliable independent material. This is the approach adopted by the CESTAT and the Court finds it to be in consonance with the settled legal position in this regard."

24. *Likewise, in its order dated 17th September, 2015 in CEAC 6/2013 (Flevel International v. Commissioner of Central Excise) [2016 (332) E.L.T. 416 (Del.)] dealing with a similar situation where the Adjudicating Officer had denied the noticee the right of cross-examination, the Court observed as under:*

'45. As regards the request for cross-examination of the other witnesses, the adjudication order again dealt with this perfunctorily. It simply stated in para 36 that if the request made by the Appellant in the letter dated 31st January, 1985 for cross-examination of "such a large number of persons was granted it would have taken the case to a non-ending process." This cannot be a justified reason within the meaning of Section 9D of the Act to deny that opportunity to the Appellant. ….. .

46. The CCE also wrongly proceeded on the basis that there was no right of cross-examination overlooking the fact that Section 9D of the Act restricts the grounds on which the cross-examination can be denied. It also overlooks the decision of the Supreme Court in Swadeshi Polytex Ltd. v. Collector of Central Excise - (S.C.) and Laxman Exports Ltd. v. Collector of Central Excise - (S.C.) to the effect that when a statement is used against an Assessee an opportunity of cross-examining the persons who made those statements ought to be given to the Assessee.

47. ***GTC Industries Limited v. Collector of Central Excise, New Delhi*** *- (S.C.), the Supreme Court has frowned upon the practice of the*

adjudicating authority looking into allegations contained in another SCN to return a finding against the Assessee."

25. *For all of the aforementioned reasons, the Court finds that the impugned order of the CESTAT does not give rise to any substantial question of law. The appeal is accordingly dismissed."*

13. In ***Nishad's case supra*****,** learned Single Judge of the Kerala High Court followed the aforesaid judgments in GST proceedings and held that it was necessary to provide an opportunity in favour of the petitioner wherein cross-examine the persons making alleged statements in order to test their veracity by holding as under:-

" 1. Petitioner is a registered taxpayer under the laws relating to Goods and Services Tax. He challenges an order imposing a penalty of more than Rs.9.40 Crores, under 122(1) of the Central Goods & Services Tax Act, 2017 (for short ' SGST ACT) apart from a further amount of Rs.9.40 Crores under section 122(1) of the State Goods & Services Tax Act, 2017 (for short 'SGST Act') and consequential interest and other penalties. Though an appeal is available to the petitioner under section 107 of the CGST/SGST Act, the jurisdiction under Article 226 of the Constitution of India has been invoked, alleging that the principles of natural justice have been violated while issuing the impugned order.

2. Petitioner is the proprietor of a plywood business by name 'M/s.Wood Tunes Enterprises'. As per Ext.P1 show cause notice, petitioner was called upon to explain why the penalty proposed therein ought not to be imposed for alleged will ful misstatements and suppression of facts with intent to evade payment of GST. It was stated therein that the statements of 20 different persons were taken, indicating that the petitioner had indulged in fake registrations and suppression of sales for the purpose of deriving undue benefit from the input tax credit.

3. In the reply submitted on 16.01.2024, apart from denying all the allegations, petitioner specifically requested for an opportunity for cross- examination of those persons from whom the statements were allegedly obtained and also stated that those statements were all retracted and were even obtained by coercion. In the meantime, on 31.01.2024 petitioner was heard and later, by a communication dated 07.02.2024 petitioner's request for cross-examination was refused. Immediately, petitioner filed Ext.P5 additional reply producing three affidavits of retractions filed by persons who had allegedly given statements and requested to withdraw the proceedings initiated and again requested to provide an opportunity for cross-examination. Disregarding the request for cross-examination, the first respondent proceeded to pass the final order dated 29-05-2024 produced as Ext.P8, imposing a huge liability on the petitioner. Petitioner challenges the said order.

4. A counter affidavit has been filed by respondents 1 to 4 stating that petitioner had indulged in a fraudulent activity

by utilising the Aadhar Card details and PAN Card details of other persons who are referred to as 'goalies' in local trade parlance. It is alleged that petitioner had misused the invoices and e-way bills to facilitate clandestine supply of plywood in the name of goalies who were mere name lenders in the transaction and that those persons were serviced by other goalies, thereby creating a carousel of input tax credits across several States. Subsequent to the information, the Directorate General of GST Intelligence searched the office and residential premises of the petitioner and gathered documentary evidence and statements of his accomplices from which the adjudicating authority came to the conclusion that the petitioner had indulged in serious fraud. The respondents also stated that even though show-cause notices were issued in 2022, till 31.01.2024, there was no reply notice and when a personal hearing was granted on 31.01.2024, a reply notice was filed, requesting for cross-examination of the individuals who were named in the reply notice. After referring to various details it is stated that the request for cross-examination was only for the purpose of protracting the proceedings and there was no purpose in the said demand.

5. I have heard Sri. Jaikumar S. learned counsel for the petitioner and Sri. R. Harishankar, learned Standing Counsel for the respondents.

6. The only issue that requires consideration is whether the impugned order ought to be interfered with under Article 226 of the Constitution of India when the remedy of an appeal is available under section 107 of the Act.

7. On a reading of Section 107(11) of the Act, it is evident that the Appellate Authority does not possess the power to remand the case, if in case any anomaly is detected in the impugned order, or even when there is any violation of the principles of natural justice. The Appellate Authority can only confirm, modify or annul the order appealed against. The aforesaid provision has specifically curtailed the right of the appellate authority to remand the case. Hence, in cases of violation of principles of natural justice, resorting to the remedy under Article 226 of the Constitution of India is legally justified.

8. Petitioner contends that there is a failure to abide by the principles of natural justice by not granting an opportunity to cross-examine the persons from whom statements have been recorded by the tax authorities. In this context, it is necessary to observe that as per Section75(4) of the Act, an opportunity for cross-examination of the witnesses is not specifically mentioned and instead only an opportunity of hearing alone is required to be given.

9. Normally when a statement of a third party is relied upon in an adjudication proceedings, and a request for cross-examination is made, unless it is found that the request is frivolous or it is impossible to procure the presence of the person, such cross-examination ought to be permitted. Cross-examination is the mode in which the veracity of the alleged statement can be tested. Fairness demands that the reliability and credibility of the statement of a third party be tested upon cross-examination. This is all the more so when there is a request for cross-examination. As long as the request is not

impractical or facetious, the grant of such an opportunity is rudimentary. The frivolous nature of the request for cross-examination is dependent upon the nature and circumstances of the person who is sought to be cross-examined. If the statements obtained during the course of an investigation are relied upon to issue a show cause notice and if a request is made to grant an opportunity for cross-examination, those statements can be relied upon against a party only if an opportunity as requested is granted, unless, of course, the person is unavailable due to death or otherwise.

10. In the instant case, statements of about 20 persons have been relied upon to pass an order imposing a penalty upon the petitioner. The request put forth by the petitioner in the reply notice dated 16.01.2024 for cross-examination of the witnesses was refused on 07.02.2024. Once again the petitioner made a request as per Ext.P5 final reply notice pointing out that failure to grant an opportunity for cross-examination amounts to a violation of the principles of natural justice. It was also requested to accept the affidavits produced by him along with the final reply notice if in case the cross- examination is not permitted. Without granting an opportunity to cross- examine the persons who gave statements against the petitioner, the impugned order was issued imposing huge penalties and other fines on the petitioner.

11. The Adjudicating Authority in the impugned order has mentioned that cross-examination is not required to be granted to the petitioner as the same will not in any way affect the bonafides of evidence collected in the form of statements

of those witnesses already on record. After referring to various judgments and after making the observations, the Adjudicating Authority came to the conclusion that there was no merit in the demand for cross-examination. The following observations in the impugned order are relevant :

> *"43.8 In the instant case, I find that in all the statements it has been specifically stated that they were being given voluntarily and the averments therein were true and correct. Any retraction in the future through cross examination or otherwise will fail due to the long delay, as has been consistently held by the various Courts in decisions on delayed retractions. Therefore, in my considered opinion any cross examination of these persons will not, in any way, affect the bonafides of evidence already on record. After all, the decision as to whose statements are to be recorded for establishing the facts of a case is the prerogative of the investigating agency and it is upto the adjudicating authority to weigh such evidence as brought forth, which may or may not include statements, and decide whether any demand would sustain or not."*

12. The aforesaid observations indicate that the Adjudicating Authority went on a wrong tangent in assuming that cross-examination will not affect the credibility of the statement. Such a foregone conclusion is legally impermissible as it reflects a predilection. The Adjudicating Authority cannot presuppose or presume what could be the subject matter of the cross-examination, or what benefit would be derived by the person proceeded against, through such cross- examination.

13. In Andaman Timber Industries vs. CCE(2015) 62 taxmann.com 3/52 GST 355/314 ELT 641/38 GSTR 117 (SC)/(2016) 15 SCC 785 the Supreme Court while dealing with the challenge held that refusing cross-examination of witnesses whose statements were made the basis of the

impugned order was a serious flaw which makes the order itself a nullity as it amounted to violation of the principles of natural justice. In the said case, similar to the case on hand, statements of two witnesses were recorded during the investigation which were relied upon in the show cause notice and in the order of adjudication to impose a penalty, after refusing to grant an opportunity of cross-examination. The following observations in are relevant.

> *"6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them."*

14. In an earlier decision of the Supreme Court in State of Kerala.vs.K.T. Shaduli Yusuf Grocery Dealer 1977 taxmann.com 48 (SC)/ (1977) 2 SCC 777, while considering a question arising under the Kerala General Sales Tax Act,

1963 it was observed that even though the tax proceedings are quasi-judicial in nature and the Sales Tax authorities are not strictly bound by the rules of evidence, still, they are bound by the principles of natural justice. It was held that when circumstances clearly justify the grant of an opportunity for cross-examination, especially when the statements become an integral part of the materials on the basis of which the order by the Taxing Authority is passed, an opportunity to rebut the same should be granted to the assessee.

15. In the decision of the High Court of Calcutta in Roshan Sharma v. Assistant Commissioner of Revenue, State Tax, West Bengal and Others (M.A.T. No.854 of 2024) which arose under the CGST Act, the court held that despite the specific request for cross-examination of all witnesses who had given statements to the Adjudicating Authority, refusal to grant such an opportunity led the court to remand the case for fresh consideration.

16. Yet again in Mohammed Fariz & Co. v. Commissioner of Customs (2019 (1) KLR 229) this Court observed that when a person is called upon to answer accusations made against him, it is his right to defend himself reasonably and it will not in any way prejudice the department, if the request for cross-examination is allowed. The court went on to hold that waiting till the adjudication process is over and then deciding upon whether any prejudice would be caused to the appellant for not affording him an opportunity to cross- examine the witnesses whose statements were relied on is not legally proper. The court also observed that if the party is permitted to cross-examine the

witnesses at an earlier stage, it would only help the department to arrive at the right conclusion as to whether the statements of those witnesses, who had withstood the rigour of cross-examination, are to be relied upon in the adjudication process.

17. In the instant case, as mentioned earlier, statements of 20 witnesses were relied upon by the Adjudicating Authority for the purpose of entering findings against the petitioner and consequentially imposing penalty. The basic requirement of the rule of law is to grant an opportunity of hearing to the person against whom proceedings have been initiated. When statements of third parties are relied upon, it is one of the fundamental requirements that the party against whom such statements have been relied upon is granted an opportunity to question the person who gave such statements. This requirement flows from the opportunity of hearing required to be given as per section 75(4) of the CGST Act. Unilateral statements behind the back of a person cannot under any circumstances be justified under the rule of law, even if the proceedings are quasi judicial in nature.

18. Considering the nature of the order issued against the petitioner which is impugned in this writ petition, this Court is of the view that failure to grant an opportunity to the petitioner for cross-examination and relying upon the statements of persons to impose penalty have violated the principles of natural justice.

19. The decisions referred to in the impugned order regarding the justification for not granting an opportunity for

cross-examination are all cases where the facts justified such denial. In the instant case, the circumstances compel this Court to observe that an opportunity for cross-examination was a necessity. This Court is also compelled to observe that failure to grant an opportunity to cross-examine the person whose statements were relied upon is in effect delaying the whole proceeding.

20. In the result, the impugned order dated 29-05-2024 is set aside and the first respondent is directed to consider the matter afresh, after granting an opportunity for cross-examination of the persons whose statements had been taken during the investigation. Appropriate orders thereon shall be passed in accordance with law, as expeditiously as possible, at any rate, within a period of six months from the date of receipt of a copy of this judgment.

21.The writ petition is allowed."

14. The aforesaid order of the learned Single Judge was challenged by the revenue before the Single Judge in W.A.No.303/2025 which was dismissed vide final order dated 17.02.2025 by holding as hereunder:-

To what extent does the Central Goods and Services Tax Act, 2017 permit reading in the principles of natural justice? The intracourt appeal preferred by respondents 1 to 4 in the writ petition challenging the judgment dated 17.12.2024 in Nishad K. U. v. Jt. Commissioner, Central Tax and Central Excise WP(C)No.26732/2024 raises this seminal question of law.

2. *The brief facts necessary for the disposal of the appeal are as follows:*

The 1st respondent was visited with proceedings under Section 74(9) of the Central Goods and Services Tax Act, 2017 (in short, 'CGST Act']. He was further visited with an order imposing a tax and penalty of more than Rs.9.40 Crores under the statutory provisions. Despite the availability of an alternate remedy, the 1st respondent herein approached the writ court alleging a serious infraction of the principles of natural justice, insofar as there was a failure to accede to his request for cross-examination of persons, whose statements were obtained during the enquiry and which were relied upon by the authority while passing the order of penalty.

3. *The appellants contended before the learned Single Judge that under the scheme of the CGST Act, there is no mandate for granting permission to cross-examine the witnesses whose statements were obtained by the proper officer in a proceedings for imposition of tax. However, the learned Single Judge, who considered the writ petition, took the view that the principles of natural justice had been violated since the authorities had denied the right to cross-examine the persons, who had given statements against the writ petitioner. While doing so, the learned Single Judge relied on the decision of the Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise [(2016) 15 SCC 785].*

4. *In the appeal before us, the appellants would contend that the learned Single Judge went wrong in placing*

reliance on the decision of the Supreme Court in Andaman Timber Industries (supra), especially since the decision referred to above did not take into consideration a binding Three Judge Bench decision of the Supreme Court in Kanungo & Co. v. Collector of Customs [1983] 13 ELT 1486 (SC) and in Surjeet Singh Chhabra v. Union of India. It is the specific case of the appellants that there is no requirement in law to grant an opportunity to crossexamine witnesses.

5. *Heard Sri.R.Harishankar, the learned counsel appearing for the appellants, and Sri.S.Jaikumar, the learned counsel appearing for the 1st respondent/writ petitioner.*

6. *Sri.R.Harishankar, the learned counsel appearing for the appellants, vehemently pointed out that there is no requirement to follow the principles of natural justice in an adjudication proceedings, especially when the Act does not contemplate such an opportunity. The writ petitioner cannot insist, as a matter of right, that he should be granted an opportunity to cross-examine the witnesses, whose statements were obtained by the proper officer. He reiterated that although the learned Single Judge placed reliance on the decision of the Supreme Court in Andaman Timber Industries (supra), the Supreme Court had rendered the said judgment without referring to the binding three Judge Bench decision in Kanungo & Co (supra).*

7. *On the other hand, Sri.S.Jaikumar, the learned counsel appearing for the 1st respondent/writ petitioner, would contend that even if there is no provision under the CGST Act*

that permits the cross-examination of persons, whose statements were relied on by the proper officer, the principles of natural justice have to be read into the said provision. Infraction of the said principle would vitiate the proceedings and, therefore, the writ petitioner was perfectly justified in approaching the writ court.

8. *We have considered the rival submissions raised across the bar.*

9. *The question of maintainability of the writ petition, despite the existence of an alternate remedy, is no longer res integra. The Supreme Court in Commissioner of Income Tax v. Chhabil Dass Agarwal [2014 (1) SCC 603] formulated four exceptional cases wherein a writ court can entertain a writ petition, despite the availability of an alternate remedy. Paragraph 15 of the said decision is extracted as under:*

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

10. *In the present case, the writ petition was preferred alleging that while passing the impugned order, Ext.P8, the proper officer did not grant an opportunity to the petitioner to cross-examine the witnesses, whose statements were relied on by him. Therefore, we find that the writ petition was perfectly maintainable despite the existence of an alternative remedy.*

11. *The appellants, however, maintain that it is not the requirement of law to provide an opportunity to cross-examine the witnesses, whose statements were recorded by the proper officer under Section 74 of the CGST Act. We thus are called upon to judge whether it is a requirement of law that in proceedings under Section 74 of the CGST Act, the proper officer has to grant an opportunity of cross-examination to the assessee, if requested.*

12. *Section 74 of the CGST Act prescribes the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. Once the proper officer forms an opinion that a notice has to be issued to the assessee, he must serve a notice under sub-Section (3) of Section 74 of the CGST Act containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised. Once the said notice is given, then, the proper officer is required under sub-Section (9) of Section 74 to consider the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty*

due from such person and issue an order. There is no express provision for permitting a cross-examination of witnesses in the statute. It is therefore that the appellants contend that so long as the Act does not envisage such an opportunity, the proper officer is not required to extend such a benefit to the assessee. In support of the aforesaid contention, the learned Counsel placed extensive reliance on the decision of the Supreme Court in Kanungo & Co. (supra).

13. *On a close reading of the aforesaid decision, we are of the considered view that the decision may not apply to the facts of the present case. A reading of the judgment shows that it was rendered in the context of provisions of the Sea Customs Act, 1878. When strong reliance is placed on the said decision, the appellants conveniently omitted to notice the fact that the Sea Customs Act, 1878 stood repealed on promulgation of Customs Act, 1962, where the provision governing procedure for adjudication is Section 122 which provides for an opportunity for hearing and therefore does not exclude the principles of natural justice. Therefore, we are of the view that the decision rendered by the Supreme Court in Kanungo & Co (supra) has to be understood as one rendered in the facts of that case and cannot have universal application in view of the subsequent enactment. Moreover, the extent of the application of principles of natural justice has to be construed in the context of a procedure prescribed under a particular enactment.*

14. *Turning to facts, it can be seen that the proper officer recorded the statements of the persons who had*

deposed against the assessee and their statements were relied on by the proper officer in arriving at a tentative finding against the petitioner. Thus, the entire basis for the formation of an opinion of guilt against the petitioner was the statements of third parties recorded by the proper officer. If the writ petitioner was to prefer an effective representation against the proposals in the notice, he had to know the basis of the allegations against him and test the evidence used against him. It was therefore imperative for the proper officer to have granted the opportunity of cross-examination to the petitioner.

15. *As regards the contention of the appellants that it is not the requirement of law to provide an opportunity to cross-examine the witnesses since it is not an integral part of the principles of natural justice, we cannot but disagree with the stand of the appellants. It is now settled law that in every quasi-judicial proceedings, the rule of natural justice has to be followed. The rule of natural justice is the tenet of every adjudication proceedings, a violation of which renders the proceedings void. When courts are called upon to decide the validity of quasi-judicial proceedings on the ground of violation of principles of natural justice, it cannot shut its eyes and adopt a pedantic approach and hold that unless the said principle is specifically extended under plenary legislation or the rules framed under it, the insistence of the principles is not mandatory.*

16. *In Krishnadatt Awasthy v. State of M.P. [2025 SCC Online 179], a three Judge Bench of the Supreme Court considered the question as to whether in the absence of any*

rule which mandates grant of an opportunity of hearing or extending the principles of natural justice, a violation of the latter would render the entire proceedings void? On an extensive analysis, the Court held that a breach of the principles of natural justice strikes at the fundamental core of procedural fairness, rendering the decision invalid unless exceptional circumstances justify such deviation. The Court went on to hold further that the denial of natural justice at the initial stage cannot be cured at the appellate stage. On an extensive consideration of the various precedents, the Court also held that the principles of natural justice are the cornerstone of justice, ensuring that no person is condemned unheard.

17. *In Ayaaubkhan Noorkhan Pathan v. State of Maharashtra [(2013) 4 SCC 465], the Supreme Court considered the question as to whether a request for cross-examination of the witnesses would form part of the principles of natural justice. The Court was considering the question in the context of verification of a caste certificate by the scrutiny committee constituted under the State law to go into the caste status of a particular employee. The Court held that nonextension of an opportunity to cross-examine the witnesses would vitiate the decision of the scrutiny committee, since the same was violative of the principles of natural justice.*

18. *A Division Bench of the Calcutta High Court in Ajay Saraogi v. Union of India [2024 (136) GSTR 330], while considering the question as to whether the right of cross-*

examination is imbibed under the provisions of the Customs Act, 1962 held that the Customs Act, 1962 does not prohibit the application of the principles of natural justice.

19. *In Union of India v. Tulsiram Patel [1985 (3) SCC 398] a Constitution Bench of the Supreme Court considered the scope of the principles of natural justice and held that a Rule framed under Article 309 cannot altogether exclude the principles of natural justice and if it does, then it is ultra vires.*

20. *We must note that the Supreme Court held as above despite the second proviso to Article 311(2) being deleted by the Constitution (Forty Second Amendment) Act, 1976. Thus, even if the plenary legislation or the subordinate legislation does not provide for the extension of the principles of natural justice, the same has to be read into the provisions.*

21. *In Kothari Filaments v. Commissioner of Customs (Port) [(2009) 2 SCC 192], the Supreme Court held that the provisions of the Customs Act, 1962 do not specifically exclude the principles of natural justice and the denial of opportunity to cross-examine the witnesses whose statements were relied on by the authorities while passing the order of confiscation, renders the proceedings invalid.*

22. *In Aureliano Fernandes v. State of Goa [(2024) 1 SCC 632], the Supreme Court held that extension of the principles of natural justice is not an empty incantation. It forms the very bedrock of Article 14 and any violation of these principles tantamounts to violation of Article 14 of the Constitution. Paragraph Nos.35, 36, 37 and 38 are extracted hereunder:*

"G. Article 14: Bedrock of the principles of natural justice

35. Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

36. Article 14, often described as the "Constitutional Guardian" of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines "law" to include any ordinance, order, bye-law, rule, Regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the process of expansive judicial interpretation.

H. THE TWIN ANCHORS: NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM

37. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasijudicial or administrative in nature, are Nemo Judex In Causa Sua, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and Audi Alteram Partem, i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

38. How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench

decision in Maneka Gandhi v. Union of India (1978) 1 SCC 248. In this case, where a challenge was laid to the order of impounding the passport of the Appellant, which was silent on the reasons for such an action and the Respondent-State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable."

23. *We must bear in mind that when judicial review of the order of a quasi-judicial authority is sought for, the court cannot turn a blind eye toward the civil consequences arising out of those orders impugned. Therefore, the assessee was fully justified in making a request for cross-examination of the witnesses whose statement formed the basis of the impugned order and non extension of such an opportunity erodes the efficacy of the order and thus renders it nugatory.*

24. *Having said so, we must hasten to add that the right to cross-examine does not extend in respect of all witnesses. During the consideration of the appeal, we found that while issuing notices and passing final orders under Section 74 of the CGST Act, certain persons were arrayed as co-noticees. The plea of the writ petitioner to seek cross-examination of the co-noticees cannot be accepted as such. At best, the writ petitioner can only request the proper officer to serve copies of the replies submitted by the co-noticees to the notices received by them.*

25. *In conclusion, we find that the stand of the appellants that the principles of natural justice need not be followed during an adjudication under the provisions of the CGST Act is clearly untenable. In the light of the principles expounded by the Supreme Court in Tulsiram Patel (supra)*

and Krishnadatt Awasthy (supra), we hold that in appropriate cases, extending an opportunity of cross-examination in a proceedings under Section 74(9) of the CGST Act 2017 is an integral part of the principles of natural justice, a violation of which will render the proceedings void.

Therefore, we decline to interfere with the judgment of the learned Single Judge setting aside the impugned order and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss this writ appeal. No costs.

15. In view of the aforesaid facts and circumstances and the principles laid down in the judgments referred to supra, I am of the view that the 1st respondent fell in error in declining to provide an opportunity to the petitioner to examine / cross-examine the L & T representatives whose statements had not only been recorded by the respondents during investigation but the same were relevant, material and germane and had been relied upon by the 1st respondent in the impugned order without providing an opportunity to the petitioner to discredit or impeach the veracity of the statement and the credibility of the said L & T representatives thereby resulting in erroneous conclusion.

16. Insofar as the judgments of the Apex Court and Telangana High Court referred to in the impugned order supra, and relied upon by the learned counsel for the respondents, in the facts and circumstances obtaining in the said cases, it was held that the cross-examination of the witnesses would not make any material difference to the case nor was the cross-examination necessary or cause any prejudice to the petitioners therein; it would also be relevant to note that those judgements were rendered relating to confessions ; however, in the facts of the case on hand, as stated supra, the subject transactions being undisputedly between the petitioner and L & T and the statements of the L & T representatives having been recorded during investigation and the same not only being relevant material and germane but also relied upon by the 1st respondent for adjudication, examination / cross-examination of the L & T representatives by the petitioner was not only essential and required but serious prejudice would be caused to the petitioner if it was denied and refused an opportunity to examine / cross-examine the L & T representatives whose statements were made the basis by the 1st respondent to pass the impugned order and consequently, the said judgments placed by

the respondents are not applicable to the facts of the instant case and their contention in this regard cannot be accepted.

17. In view of the aforesaid facts and circumstances, I am of the considered opinion that the impugned order passed by the 1st respondent deserves to be set aside and the matter be remitted back to the respondents for reconsideration afresh in accordance with law.

18. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure-A dated 01.02.2025 passed by the 1st respondent is hereby set aside.

(iii) The matter is remitted back to the 1st respondent for reconsideration afresh in accordance with law for the purpose of cross-examination of the representatives of L & T as requested by the petitioner.

(iv) The 1st respondent is hereby directed to issue summons / notice to the L & T representatives as indicated in the memo filed / to be filed by the petitioner and 1st respondent shall secure the presence of the said representatives of the L & T and permit the

petitioner to cross-examine them and thereafter proceed further in accordance with law.

(v) Liberty is reserved in favour of both parties to file additional pleadings, and adduce additional oral and documentary evidence in support of their respective claims.

(vi) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the merits / demerits of the rival contentions.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl.
List No.: 19 Sl No.: 10