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## Quashed Rectification Order issued without considering overlapping proceedings and opportunity of being heard under Section 161 of the CGST Act

The Hon'ble Bombay High Court in the case of *Taiyo Nippon Sanso India Pvt. Ltd. v. Union of India & Ors. [Writ Petition No. 1966 of 2025 dated April 22, 2026]* quashed the rectification order passed under Section 161 of the Central Goods and Services Tax Act, 2017 (“**the CGST Act**”) on the ground that the said order was passed without granting an opportunity of personal hearing to the Assessee and without considering the Assessee’s objection regarding overlapping proceedings simultaneously initiated by the Central GST and the State GST authorities for the same disputed period, and remanded the matter back to the Designated Authority for *de novo* consideration after granting a personal hearing to the Assessee.

### Facts:

M/s. Taiyo Nippon Sanso India Pvt. Ltd. (“**the Petitioner**”) is a company engaged in the business of manufacturing and sale of industrial and medical specialty gases, either in liquid or gaseous form, and is duly registered as a supplier under the Goods and Services Tax laws.

On July 12, 2021, the Petitioner received an email from the State GST Authority (“**Respondent No. 4**”) seeking certain tax clarifications and reasoning for the Financial Year 2017-18. Subsequently, on September 29, 2021, the Central GST Authority (“**Respondent No. 3**”) issued an audit notice in Form GST ADT-01 to the Petitioner, in respect of which the Petitioner duly participated. The said audit proceedings were closed on November 15, 2022, in Form GST ADT-02.

In the meantime, on October 20, 2021, Respondent No. 4 issued discrepancies in Form GST ASMT-10 followed by notices dated November 29, 2021, and December 22, 2021, to which the Petitioner filed replies seeking adjournments. Thereafter, Respondent No. 4 passed an order dated April 21, 2022, under Section 73(9) of the CGST Act/MGST Act, 2017.

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On July 14, 2022, the Petitioner intimated Respondent No. 4 that since the Central GST Authority had already initiated audit proceedings for the disputed period, the parallel State GST assessment proceedings were without jurisdiction and were liable to be dropped, and consequently, the order dated April 21, 2022, was liable to be set aside.

Subsequently, on July 20, 2022, the Petitioner filed a rectification application under Section 161 of the CGST Act/MGST Act along with a comprehensive reply addressing all the discrepancies outlined in the order dated April 21, 2022, and sought an opportunity of personal hearing. The Petitioner further addressed letters dated July 27, 2022, and August 10, 2022, along with annexures before Respondent No. 4, requesting them to set aside the order dated April 21, 2022, on the ground of duplication of proceedings and jurisdictional infirmities.

However, without appreciating the submissions and the relevant documents placed on record and without granting any opportunity of being heard, Respondent No. 4 passed the rectification order dated October 20, 2022 ("**the Impugned Order**"), wherein only the error in the name of the taxpayer was rectified; however, an additional demand which was over and above the demand raised in the show cause notice in Form GST DRC-01 dated December 22, 2021, was sought to be raised.

Aggrieved by the Impugned Order, the Petitioner filed the present writ petition before the Hon'ble Bombay High Court.

## **Issue:**

Whether a rectification order passed under Section 161 of the CGST Act, rejecting the rectification application without granting an opportunity of personal hearing and without considering the Assessee's objection on overlapping proceedings initiated by Central and State GST authorities, is sustainable in law?

## **Held:**

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The Hon'ble Bombay High Court in **Writ Petition No. 1966 of 2025** held as under:

- **Observed that**, the Impugned Order of rectification was passed by Respondent No. 4 without granting an opportunity of being heard to the Petitioner and without considering the legal and factual submissions placed on record by the Petitioner.
- **Noted that**, the Impugned Order had also been passed without considering the Petitioner's specific objection that audit proceedings for the same disputed period had already been initiated and concluded by the Central GST authorities, and therefore parallel proceedings by the State GST authorities raised concerns of overlapping jurisdiction.
- **Further noted that**, learned Additional Government Pleader for the State fairly submitted that the matter could be remanded for fresh hearing after giving the Petitioner an opportunity of being heard.
- **Held that**, the Impugned Order dated October 20, 2022, is liable to be quashed and set aside as it was passed in breach of the principles of natural justice.
- **Directed that**, the proceedings stand remanded back to Respondent No. 4/Designated Authority for *de novo* consideration with liberty to issue a fresh show cause notice to the Petitioner within a period of two weeks from the date the order is made available; thereafter, a personal hearing shall be granted to the Petitioner within a period of two weeks and a reasoned and speaking order shall be passed, with the determination to be completed within a period of three months. All contentions of the parties were expressly kept open.

## Our Comments:

Section 161 of the CGST Act provides for rectification of errors apparent on the face of the record by any authority who has passed or issued any decision, order, notice, certificate or any

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other document, either *suo motu* or upon being brought to its notice by any officer appointed under the CGST Act, SGST Act, UTGST Act, or by the affected person. The first proviso bars rectification beyond a period of six months from the date of issue of such decision, order, notice, certificate or any other document. The second proviso carves out an exception to the said six-month limitation in cases where the rectification is purely in the nature of correction of a clerical or arithmetical error arising from any accidental slip or omission. Importantly, the **third proviso** to Section 161 mandates that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

The instant judgment of the Hon'ble Bombay High Court reaffirms that the principles of natural justice are a non-negotiable procedural safeguard when the rectification application of an Assessee is decided in a manner adverse to the Assessee. Importantly, the Hon'ble Bombay High Court has gone a step further by holding that not merely the absence of a personal hearing, but also the failure to consider the substantive objections raised by the Assessee (in this case, the objection regarding overlapping proceedings simultaneously initiated by Central and State GST authorities) vitiates the rectification order.

It is pertinent to note that, in a **contrary view**, the Hon'ble Madras High Court in ***Eminent Textiles Mills Private Limited v. The State Tax Officer [W.A.(MD) No. 1821 of 2025 dated July 14, 2025]*** interpreted the third proviso to Section 161 of the TNGST Act and held that the third proviso is triggered only when two elements are present, namely: (i) there is rectification, and (ii) such rectification adversely affects any person. The Hon'ble Madras High Court observed that "rectification" in its very nature involves alteration, and where there is no alteration, there is no rectification. Accordingly, it held that the plain reading of the third proviso does not yield any conclusion that the formation of an adverse view while disposing of the rectification application would require complying with the principles of natural justice. The expression "such rectification" refers only to a positive act of rectification and the situation of "refusal to rectify" is not envisaged by the third proviso. Consequently, the Hon'ble Madras High Court

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held that the dismissal of a rectification application without modification of the original order does not mandate personal hearing.

However, in a *pari materia* view, the Hon'ble Delhi High Court in ***M/s. Mark Agencies v. Department of Trade and Taxes & Anr. [W.P.(C) 9700/2025 dated August 11, 2025]*** quashed the rectification order passed without granting an opportunity of personal hearing and held that the principles of natural justice are *sine qua non* when the rectification petition is decided adversely against the Assessee. The Hon'ble Delhi High Court relied on its earlier judgment in ***HVR Solar Private Limited v. Sales Tax Officer Class II AVATO Ward 67 & Anr. [W.P.(C) 4506/2025]*** and the decision of the Hon'ble Madras High Court in ***Suriya Cement Agency v. The State Tax Officer (ST), State of Tamil Nadu [W. P. (MD) No. 7338 of 2024 And W. M. P. (MD). No. 6758 of 2024]*** and held that, as per the third proviso to Section 161, if the rectification application is allowed in favour of the Petitioner, hearing can be dispensed with; however, if the rectification is to be decided adversely affecting the right of the applicant, the principles of natural justice have to be followed and a hearing ought to be given, if sought.

In light of the divergent views taken by the various High Courts, the position of law on whether mere rejection of a rectification application (without any alteration to the original order) requires compliance with the principles of natural justice continues to remain a debatable issue. However, the predominant view emerging from the Hon'ble Bombay High Court, Delhi High Court, and Calcutta High Court is that wherever the rejection of a rectification application has civil consequences for the Assessee or operates adversely against the Assessee, the Assessee must be granted an opportunity of personal hearing before the rectification application is disposed of, in order to satisfy the principles of natural justice.

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