Denial of Cross-Examination Does Not Vitiate GST Proceedings, Where Allegation of Fraudulent ITC Can Be Rebutted Through Documentary Evidence

The Hon'ble Madras High Court in ***M/s Noordeen Enterprises v. Additional Commissioner of GST and Central Excise [W.P. Nos. 20547, 20549 & 20552 of 2023 dated June 03, 2026]*** dismissed the writ petitions challenging the order-in-original assessing tax liability on the ground of fraudulent availment of Input Tax Credit (**"ITC"**), and held that the right of cross-examination is not absolute in quasi-judicial proceedings and that mere denial thereof would not vitiate the proceedings where the allegation can be effectively countered by the assessee through documentary evidence such as invoices, e-way bills and transportation receipts.

Facts:

- M/s Noordeen Enterprises, M/s MNS Enterprises and Shri Sheik Dawood (**"the Petitioners"**) were issued a common Order-in-Original No.53/20203(DGGI) dated March 28, 2023 by the Additional Commissioner of GST and Central Excise, Chennai South Commissionerate (**"the Respondent"**), assessing tax liability on the ground of fraudulent availment of ITC.

- The said order relied upon the statement of one Mr. Joseph Selvaraj recorded during the course of investigation.

- The Petitioners pointed out that the order-in-original itself recorded the observations of the Additional Chief Metropolitan Magistrate, E.O.II, Egmore, to the effect that bruises and injuries were noticed on the body of Mr. Joseph Selvaraj and that he had stated he was ill-treated by officials of the GST Department.

- Aggrieved by the impugned order and the denial of opportunity to cross-examine Mr. Joseph Selvaraj, the Petitioners preferred writ petitions under Article 226 of the Constitution of India seeking issuance of a writ of Certiorarified Mandamus to quash the order and to direct the Respondent to permit cross-examination of necessary persons.

Contentions:

- The Petitioners contended that since the statement of Mr. Joseph Selvaraj was relied upon by the adjudicating authority, it was just and necessary that they be allowed to cross-examine him, particularly given the Magistrate's record of injuries indicative of coercion, and that denial of such cross-examination contravened the principles of natural justice.
- The Respondent countered that the tax liability was imposed primarily on the ground of fraudulent availment of ITC and that the Petitioners could have independently established their entitlement to ITC by submitting documentary proof, such as invoices and transportation records, to show that the supplies received by them were genuine and legitimate.

Issue:

Whether denial of opportunity to cross-examine a witness whose statement is relied upon by the adjudicating authority vitiates proceedings under the GST law, where the allegation is fraudulent availment of ITC that is capable of being independently rebutted by the assessee through documentary evidence?

Held:

The Hon'ble Madras High Court in ***W.P. Nos. 20547, 20549 & 20552 of 2023*** held as under:

- **Observed that**, in quasi-judicial proceedings, the right of cross-examination is not absolute and is contingent upon the factual matrix of each case.

- **Noted that**, the allegation against the Petitioners was that ITC was availed without a genuine supply being made, and such allegation could have been countered by filing an appropriate reply enclosing documents such as invoices, e-way bills, transportation receipts and the like.

- **Held that**, in this factual context, mere denial of the right of cross-examination does not vitiate the proceedings against the Petitioners, and accordingly declined to exercise discretionary jurisdiction under Article 226 of the Constitution of India.

- **Directed that**, the Petitioners are permitted to file statutory appeals against the impugned order, and if such appeals are presented within 30 days from the date of receipt of a copy of the order, the appellate authority shall receive and dispose of the same on merits, subject to compliance with the pre-deposit requirements.

Our Comments:

Section 75(4) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) mandates that 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. Section 136 of the CGST Act governs the relevance of statements made and signed before a Gazetted Officer of central tax during the course of any inquiry or proceeding. However, neither provision creates an unfettered right of cross-examination at every stage of GST adjudication; the contours of such right have been progressively shaped by judicial pronouncements.

The present judgment aligns with the developing line of jurisprudence that the right of cross-examination in GST adjudication is fact-dependent and not absolute. The Hon'ble Delhi High Court in ***M/s Vallabh Textiles v. Additional Commissioner Central Tax GST, Delhi East & Ors. [W.P.(C) 4576/2025 dated April 09, 2025]*** held that the right to cross-examine is not an unfettered right at the show cause notice stage and a party must specify reasons to demonstrate prejudice; such right may be legitimately denied where the case rests on undisputed documentary evidence and no prejudice is shown. Similarly, the Hon'ble Madhya Pradesh High Court has, in a batch of writ petitions involving alleged bogus ITC, declined writ intervention and relegated the petitioners to the statutory appellate remedy on the ground that whether denial of cross-examination caused prejudice is itself a factual question best examined by the appellate authority.

Similarly, the Hon'ble Madras High Court in ***M/s. Amritha Marketing v. The Joint Commissioner of CGST & Central Excise [W.P.(MD) Nos. 13354, 13396, 13829 & 13830 of 2025 dated November 26, 2025]*** held that cross-examination of the person who retrieved electronic data was not necessary where the assessees had not disputed the data retrieval process and had certified the same, though the final orders were quashed on the separate ground that best judgment extrapolation was not permissible under Section 74 without express statutory authority.

A contrary line of authority is represented by the Hon'ble Supreme Court's decision in ***Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II [2015 (10) TMI 442 – SC],*** where it was held that not allowing the assessee to cross-examine witnesses whose statements were made the basis of the impugned order amounted to a serious flaw rendering the order a nullity. The Hon'ble Kerala High Court in ***Joint Commissioner v. Nishad K.U. [WA NO. 303 OF 2025]*** similarly held that extending an opportunity for cross-examination in proceedings under Section 74(9) of the CGST Act is an integral part of the principles of natural justice and that its violation renders the proceedings void; though it too clarified that the right is not absolute and does not extend to all witnesses.

The position emerging from these decisions is that where the adjudication rests substantially on a witness statement without independent corroboration, denial of cross-examination would vitiate the order; however, where the case is built upon documentary evidence such as invoices, e-way bills and transportation records that the assessee can independently rebut, mere denial of cross-examination does not by itself amount to a violation of natural justice. A noteworthy feature in the present case is that the Magistrate's record of bruises and injuries on Mr. Joseph Selvaraj — suggestive of coercion — was not considered by the Court to compel cross-examination, given the essentially documentary character of the ITC dispute. The judgment also reinforces the principle of judicial restraint under Article 226 in fraudulent ITC matters, with the Court relegating the dispute to the statutory appellate forum and preserving the assessee's right of appeal by effectively condoning the limitation already lapsed.

Key Takeaway:

In ITC disputes, documents remain the first line of defence. Cross-examination is a valuable natural justice safeguard, but it is not a substitute for proving receipt of genuine supplies through primary records.

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