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Mandatory Personal Hearing under Section 75(4) Cannot Be Waived if taxpayer wrongly selected 'No' for personal hearing in SCN Reply

The Hon'ble Gujarat High Court in the case of *Komal Jayeshbhai Hemavat v. State Tax Officer (4) & Anr. [R/Special Civil Application No. 6209 of 2024, order dated April 02, 2026]* held that the statutory mandate of Section 75(4) of the CGST Act requiring grant of personal hearing cannot be dispensed with merely because the assessee selected "No" for personal hearing in reply to the show cause notice, and failure to grant such hearing vitiates the order as being in breach of principles of natural justice.

Facts:

Komal Jayeshbhai Hemavat ("**the Petitioner**"), a registered taxpayer under the Gujarat Goods and Services Tax Act, 2017, whose premises were raided and books of accounts were seized. A show cause notice dated September 21, 2023 in Form GST DRC-01 was issued, and the Petitioner filed a reply on November 21, 2023.

State Tax Officer & Anr. ("**the Respondent**"), who passed an order under Section 74 of the GST Act dated December 30, 2023 without granting any opportunity of personal hearing.

The Petitioner contended that the impugned order was passed in violation of Section 75(4) of the CGST Act as no opportunity of personal hearing was granted, thereby breaching principles of natural justice.

The Respondent contended that the Petitioner, in Form DRC-06 dated November 21, 2023, had selected "NO" for personal hearing and therefore, no opportunity of hearing was granted.

Aggrieved by the impugned order passed without granting personal hearing, the Petitioner approached the Hon'ble High Court by way of a writ petition challenging the violation of statutory mandate under Section 75(4) of the GST Act.

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Issue:

Whether the statutory requirement of granting personal hearing under Section 75(4) of the CGST Act can be dispensed with on the ground that the assessee selected “No” for personal hearing in reply to the show cause notice?

Held:

The Hon’ble Gujarat High Court in *R/Special Civil Application No. 6209 of 2024* held as under:

- Observed that, the option of no personal hearing taken by the petitioner, cannot override the effect of mandate given by the statutory provision in Section 75(4) of the GST Act.
- Noted that, it was incumbent upon the authority to follow the mandate of Section 75(4) and grant opportunity of further hearing.
- Observed that, as per Section 75(4), the respondents are supposed to grant three opportunities of personal hearing before passing any adverse orders.
- Noted that, it is not in dispute that the petitioner was not heard before passing of the assessment order and that it is fundamental proposition of law that other side should be heard before any order is passed.
- Observed that, absence of hearing renders the order unsustainable being in breach of principles of natural justice.
- Held that, the impugned order is quashed and set aside and the matter is remanded back for de novo adjudication within 12 weeks without going into merits.

Our Comments:

The judgment strictly interprets Section 75(4) of the CGST Act as a mandatory procedural safeguard, holding that statutory compliance cannot be waived by conduct for instance,

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selection of “No” for hearing as in this case. The Court places primacy on audi alteram partem, treating personal hearing as an indispensable element of adjudication.

In the case of *M/s. Yadav Trailor Transport Co. v. Union of India & Ors. [SCA No. 3027 of 2025]*, is significant. In that case, the Court reiterated that failure to provide adequate hearing renders the order violative of natural justice and liable to be set aside.

Further the Madhya Pradesh High Court in *Sanjay Paliya Contractor v. State of Madhya Pradesh & Ors. [Writ Petition No. 18150 of 2023, order dated April 06, 2026]* adopts a conditional interpretation of Section 75(4). The Court held that where the assessee neither filed a reply to the show cause notice nor specifically requested a personal hearing, such assessee cannot subsequently allege violation of natural justice. It observed that personal hearing is ordinarily granted upon request and that non-participation in adjudication disentitles the assessee from invoking writ jurisdiction on such grounds.

Relevant Provisions:

Section 75(4) of the CGST Act, 2017

“75. General provisions relating to determination of tax.-

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.”

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