No Substitute for a Hearing – Gujarat HC Quashes Non-Speaking Section 74 Order for Denial of Personal Hearing

The Hon'ble Gujarat High Court in ***M/s. Aarya Metals & Ors. v. State of Gujarat & Anr. [R/Special Civil Application No. 7535 of 2026 dated July 28, 2026]*** quashed and set aside the two-line non-speaking order passed under Section 74 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) confirming the demand of Input Tax Credit (**"ITC"**) along with interest and penalty on the allegation of receipt of supplies from a non-existent supplier, on the ground that neither the Show Cause Notice nor the three reminders issued thereafter intimating the date, time and venue of personal hearing, and held that the statutory right of personal hearing under Section 75(4) of the CGST Act can neither be cured by merely issuing reminders nor waived by the Assessee selecting "No" against the column of personal hearing in the reply. Accordingly, the matter was remanded for fresh adjudication after affording an opportunity of hearing.

Facts:

M/s. Aarya Metals & Ors. (**"the Petitioners"**) were issued a Show Cause Notice dated August 04, 2024 (**"the Impugned SCN"**) under Section 74(1) of the CGST Act by the Revenue Department ("the Respondent") seeking to recover ITC of Rs. 7,63,026/- along with applicable interest under Section 50 of the CGST Act, on the allegation that the inward supplies received from M/s. RK Battery and Scrap (**"the Supplier"**) were non-genuine, as the Supplier was found to be a non-genuine and non-existent taxpayer and consequently, the ITC availed was inadmissible under Section 16(2) of the CGST Act.

The Petitioners were not aware of the Impugned SCN. Thereafter, the Respondent issued three reminders dated September 12, 2024, November 07, 2024 and November 18, 2024 (**"the Reminders"**). Neither the Impugned SCN nor the Reminders specified the date, time or venue of personal hearing, and the Reminders reflected "N.A." against the particulars of the date, time and venue of personal hearing.

The Petitioners filed a reply in FORM GST DRC-06 dated November 21, 2024 along with the tax invoices issued by the Supplier, wherein the Petitioners selected "No" against the column relating to personal hearing. However, the Respondent proceeded to pass a two-line order dated December 07, 2024 in FORM GST DRC-07 (**"the Impugned Order"**) directing recovery of the ITC along with interest and penalty, without granting any opportunity of personal hearing.

Aggrieved, the Petitioners filed a writ petition before the Hon'ble Gujarat High Court contending that the Impugned Order deserves to be quashed and set aside, since the Petitioners were deprived of an effective opportunity of hearing, the Impugned Order was a non-speaking, one-line order, and the issue was squarely covered by the decision of the Hon'ble Gujarat High Court in ***Aarti Enterprise v. State of Gujarat [(2026) 39 Centax 31 (Gujarat)]***.

The Respondent contended that the Petitioners were issued three reminders, had responded to the proceedings and had themselves selected "No" in the column relating to personal hearing, and were, therefore, fully aware of the proceedings. Hence, the writ petition did not deserve to be entertained.

<u>Issues:</u>

1. Whether the issuance of reminders without intimating the date, time and venue of personal hearing satisfies the mandate of Section 75(4) of the CGST Act, particularly where the Assessee has selected "No" against the column of personal hearing in the reply filed in FORM GST DRC-06?

2. Whether a two-line, non-speaking order confirming the demand under Section 74 of the CGST Act is sustainable in law?

Held:

The Hon'ble Gujarat High Court in ***R/Special Civil Application No. 7535 of 2026*** held as under:

- **Observed that,** the short issue involved pertained to the absence of intimation regarding the date, time and venue of personal hearing in the Impugned SCN, which ultimately culminated in the Impugned Order. From the pleadings on record, it emerged that the Impugned SCN did not specify the date, time or venue of personal hearing and the three Reminders also failed to specify the same.

- **Noted that,** the Petitioners had filed a reply in FORM GST DRC-06 on November 21, 2024, wherein they had selected "No" against the column relating to personal hearing, whereafter the Respondent passed the two-line Impugned Order directing recovery of the amount along with interest and penalty.

- **Relied upon** *Aarti Enterprise* (supra), wherein on an identical issue it was held that where the details of personal hearing are not incorporated in FORM GST DRC-01, the Assessee is required to be intimated of the date, time and venue of personal hearing before the final order is passed. The Respondent is not required to issue a fresh Show Cause Notice, but is required to intimate the date, time and venue of personal hearing. It was further held that an absolutely unreasoned order cannot be sustained merely because the assessee remained absent, as absence cannot absolve the State Tax Officer from passing a reasoned order after considering all the materials.

- **Further relied upon *Komal Jayeshbhai Hemavat v. State Tax Officer [(2026) 185 taxmann.com 500 (Gujarat)],*** wherein an order was set aside for non-compliance with Section 75(4) of the CGST Act even though the assessee had selected "No" in the column relating to personal hearing, holding that the Respondent is required to grant three opportunities of personal hearing before passing any adverse order.

- **Held that,** the Impugned Order deserves to be quashed and set aside on three grounds: first, the failure of the Respondent to intimate the date, time and venue of personal hearing; second, the passing of a non-speaking order; and third, the failure to afford the Petitioners three opportunities of personal hearing as contemplated under Section 75(4) of the CGST Act.

- **Directed that,** the matter is remanded to the jurisdictional State Tax Officer, who shall pass a fresh order after affording the Petitioners an opportunity of hearing in accordance with law, within a period of twelve weeks from the date of receipt of the certified copy of the order.

- **Clarified that,** since the Impugned Order has been set aside, the Petitioners' claim for refund along with interest shall remain subject to the fresh order that may be passed by the Respondent after considering the defence that may be raised by the Petitioners in the remanded proceedings.

Hence, the writ petition was allowed, and the matter was remanded back to the jurisdictional State Tax Officer for fresh adjudication.

Our Comments:

Section 75 of the CGST Act, titled "General provisions relating to determination of tax", lays down the procedural safeguards governing adjudication under Sections 73, 74 and 74A of the CGST Act. Three sub-sections were at the heart of the present decision.

Section 75(4) of the CGST Act provides 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. The two limbs are disjunctive. The second limb operates independently of any request from the taxpayer: the moment the Proper Officer contemplates an adverse decision, the grant of a hearing becomes mandatory. This is precisely why the selection of "No" against the column of personal hearing in FORM GST DRC-06 has consistently been held to be of no consequence.

Section 75(5) of the CGST Act empowers the Proper Officer to grant time and adjourn the hearing on sufficient cause being shown, for reasons to be recorded in writing, subject to the proviso that no such adjournment shall be granted more than three times to a person during the proceedings. Section 75(6) of the CGST Act mandates that the Proper Officer, in his order, shall set out the relevant facts and the basis of his decision. Read with Rule 142 of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**), which prescribes FORM GST DRC-01 (containing specific fields for the date, time and venue of personal hearing), FORM GST DRC-06 (reply) and FORM GST DRC-07 (summary of order), the statutory scheme leaves no room for adjudication by way of a two-line order passed without a hearing.

The decision reinforces a consistent line of the Hon'ble Gujarat High Court. In *Aarti Enterprise* (supra), the Court held that where the hearing particulars are missing from FORM GST DRC-01, the Department need not issue a fresh notice but must intimate the date, time and venue of hearing before passing the final order. In *Komal Jayeshbhai Hemavat (supra)*, the Court applied the reasoning in *Yadav Trailor Transport Co. v. Union of India [Special Civil Application No. 3027 of 2025] and Regent Overseas Pvt. Ltd. v. Union of India [2017 (49) S.T.R. 400 (Guj.)]*, rendered in the context of Section 33A of the Central Excise Act, 1944, to hold that the statutory contemplation of three adjournments envisages four dates of personal hearing, and that fixing three dates in a single notice cannot be equated with the grant of three adjournments. The present judgment carries this reasoning forward into Section 74 of the CGST Act and identifies the failure to afford three opportunities of hearing as an independent ground for setting aside the order.

A note of caution is warranted on this third ground. On its plain text, the proviso to Section 75(5) of the CGST Act caps the number of adjournments at three; it does not, in terms, oblige the Proper Officer to fix multiple hearing dates *suo motu*. The Hon'ble Gujarat High Court's construction, borrowed from the Central Excise and Service Tax jurisprudence, treats the cap as a floor of opportunity in practice. The position is not uniform across jurisdictions and is likely to be tested further. Taxpayers relying on this ground should, therefore, also anchor their challenge in the first two grounds, namely the absence of intimation of hearing particulars and the non-speaking nature of the order, which rest on the unambiguous language of Sections 75(4) and 75(6) of the CGST Act.

Pari materia decisions

The view that the "No" option in the reply does not dilute the statutory mandate is echoed by the Hon'ble Allahabad High Court in *Bharat Mint & Aromatics v. State of U.P. [Writ Tax No. 1029 of 2021 dated March 03, 2022]*, *Mohini Traders v. State of U.P. [Writ Tax No. 551 of 2023 dated May 03, 2023] and Mahaveer Trading Company v. Deputy Commissioner State Tax [Writ Tax No. 303 of 2024 dated March 04, 2024]*, wherein it was held that once an adverse decision is contemplated, the opportunity of hearing must be granted irrespective of whether the taxpayer has sought it, and the option marked "No" in the reply is of no consequence.

On the requirement of a reasoned order, the Hon'ble Supreme Court in *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan [(2010) 9 SCC 496]* held that recording of reasons is an essential facet of natural justice, that reasons are the heartbeat of every conclusion, and that a quasi-judicial authority must demonstrate application of mind by recording reasons. An order under Section 74 of the CGST Act which merely directs recovery, without dealing with the reply and the documents placed on record, falls foul of both Section 75(6) of the CGST Act and this settled principle.

On maintainability of the writ petition, the Hon'ble Supreme Court in *Assistant Commissioner of State Tax v. Commercial Steel Ltd. [Civil Appeal No. 5121 of 2021 dated September 03, 2021]* held that a writ petition against an adjudication order can be entertained, despite the availability of the statutory appellate remedy under Section 107 of the CGST Act, in exceptional circumstances including a breach of the principles of natural justice. The present case squarely falls within that exception.

Contrary and cautionary perspective

The Department may draw support from the “prejudice” and “useless formality” line of authority of the Hon’ble Supreme Court, including *Union of India v. Jesus Sales Corporation [(1996) 4 SCC 69]*, which held that a personal hearing is not an invariable requirement of natural justice where a written representation has been duly considered, and *Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise [(2015) 8 SCC 519]*, which recognised that natural justice need not be insisted upon where compliance would be an empty formality causing no prejudice. However, these principles had evolved in the context of an uncodified requirement of natural justice. Where the statute itself, as in Section 75(4) of the CGST Act, expressly mandates a hearing whenever an adverse decision is contemplated, the Courts have consistently declined to read a prejudice test into the provision, and the present decision is in line with that approach.

The way forward on remand

The Court did not examine the merits of the allegation that ITC is inadmissible under Section 16(2) of the CGST Act on account of the Supplier being non-existent, and the remand leaves the field open. On remand, the Petitioners would be well advised to establish the bona fides of the transactions, since the burden of proving eligibility to ITC lies on the recipient under Section 155 of the CGST Act. The Hon’ble Supreme Court in *State of Karnataka v. Ecom Gill Coffee Trading Pvt. Ltd. [Civil Appeal No. 230 of 2023 dated March 13, 2023]* held that mere production of invoices and proof of payment through banking channels is not sufficient; the dealer must prove the actual physical movement of goods and the genuineness of the transaction. At the same time, the Hon’ble Calcutta High Court in *Suncraft Energy Pvt. Ltd. v. Assistant Commissioner, State Tax [M.A.T. No. 1218 of 2023 dated August 02, 2023]*, against which the Special Leave Petition was dismissed by the Hon’ble Supreme Court on December

14, 2023, and the Hon'ble Madras High Court in *D.Y. Beathel Enterprises v. State Tax Officer [W.P. (MD) No. 2127 of 2021 dated February 24, 2021]* have held that a genuine recipient who has paid tax to the supplier cannot be saddled with the demand without the Department first proceeding against the defaulting supplier, save in cases of collusion or where the supplier is untraceable. *CBIC's Circular No. 171/03/2022-GST dated July 06, 2022* further clarifies the treatment of demand and penalty in fake invoice cases and should be pressed into service where the transactions are genuine.

Key takeaways:

- Taxpayers should scrutinise FORM GST DRC-01 and every reminder for the hearing particulars; a notice reflecting "N.A." against the date, time and venue of personal hearing is a strong ground of challenge.
- Selecting "No" against personal hearing in FORM GST DRC-06 does not waive the statutory right where an adverse order follows. Nonetheless, as a matter of prudence, taxpayers should opt for a hearing and seek adjournments in writing, so that the record itself demonstrates the denial.
- An order that does not deal with the reply and the documents on record is liable to be set aside as non-speaking, irrespective of the taxpayer's absence at the hearing.

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