AFR

Neutral Citation No. - 2024:AHC:179831-DB
Court No. - 40

WRIT TAX No. - 1757 of 2024

AGMOTEX FABRICS PRIVATE LIMITED

v.

STATE OF UTTAR PRADESH AND OTHERS

For the Petitioner **:-** Mr. Rahul Agarwal, Advocate
For the Respondents **:-** Mr. Ankur Agarwal, Standing Counsel

(Judgement dictated in open Court by Shekhar B. Saraf, J.)

Hon'ble Shekhar B. Saraf,J.
Hon'ble Vipin Chandra Dixit,J.

1. Heard learned counsel for the parties and perused the record.

2. This writ petition has been filed under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the impugned order dated September 12, 2024 passed by the Deputy Commissioner, State Goods & Services Tax, Sector 17, Kanpur/respondent No.3 under Section 74 of the Goods and Services Tax Act, 2017 (hereinafter referred as 'the Act') for the financial year 2021-22.

3. Factual matrix giving rise to the instant writ petition is delineated below:

a. On December 27, 2022, petitioner's Business premises were subjected to a search where it was found that the petitioner had wrongly availed the Input Tax Credit (hereinafter referred to as

"ITC") and refund of the same on purchase of glycerin, fatty acid and finishing chemical made up of perfumery compound. It was further found that the petitioner had also not produced proper evidence with regard to cancelling 115 e-way bills by it during the financial year 2021-22. Subsequently, a show cause notice dated March 20, 2024 was issued to the petitioner by the Deputy Commissioner, State Goods and Services Tax Sector-17, Kanpur/respondent No.3 asking it to refund the excess utilization of ITC along with penalty amounting to Rs. 2,24,24,710/- by April 19, 2024.

b. In response to the aforesaid show cause notice, the petitioner filed its reply on April 18, 2024 wherein it denied the allegations made against it mentioning that the show cause notice was not supported with any evidence or material.

c. On June 4, 2024, another show cause notice under Section 74 of the Act was issued to the petitioner by which the amount of Tax and penalty was revised to Rs. 2,43,74,686/-.

d. In response to the notice dated June 4, 2024, the petitioner again filed its reply supported with an affidavit wherein it again denied the allegation that the glycerin, fatty acid and perfumery compound are not used in its business and submitted that these materials are used as 'raw material' by the company in manufacturing process and the ITC with respect to these materials has been legally availed by the petitioner. Explanation in respect of 115 e-way bills that were cancelled during the financial year 2021-22 was also furnished by the petitioner in his affidavit.

e. In spite of the reply dated July 2, 2024 having been uploaded by the petitioner on the portal, the respondent no. 3 gave a reminder dated August 8, 2024 to the petitioner and asked it to

appear for personal hearing and submit its reply by September 6, 2024.

f. The petitioner vide its letter dated August 10, 2024, informed the respondent no. 3 that it has already given a detailed reply dated July 2, 2024 in response to the show cause notice.

g. Notwithstanding reply submitted by the petitioner, the respondent No. 3 passed the order dated September 12, 2024 under Section 74 of the Act imposing a demand of Tax along with penalty and interest amounting to Rs. 37,31,642/- upon the petitioner. Relevant portion of the said order reads as under:

"*उक्त दाखिल स्पष्टीकरण का अनुशीलन करने पर पाया गया कि दाखिल स्पष्टीकरण के बिन्दु सं0-09, 11, 23 में यह उल्लेख किया गया है कि आरोपित बिन्दुओं के सम्बन्ध में प्रश्नगत कारण बताओ नोटिस के साथ तथा कथित तथ्यों का अपेक्षित विवरण नही दिया गया है और न ही जांच रिपोर्ट दी गयी है। यह भी उल्लेख किया गया है कि ई-वे बिल को अभिखण्डित करने का कोई साक्ष्य न तो नोटिस में संदर्भित है और न ही प्रदत्त किया गया है तथा न्यायहित में सम्पूर्ण जांच के अभिलेखों के निरीक्षण एवं परीक्षण करने हेतु समय दिये जाने का उल्लेख किया गया है।*

अतः उपरोक्त के सम्बन्ध में रिफ्रेन्स सं0-ZD09824054924X दिनांक-07-08-2024 द्वारा करदाता को अभिलेखों के निरीक्षण एवं परीक्षण करने हेतु दिनांक 06-09-2024 के लिए नोटिस जारी करते हुए यह अपेक्षा की गयी कि करदाता उपस्थित होकर प्रश्नगत बिन्दुओं का अवलोकन कर लें तथा तथ्यपरक स्पष्टीकरण दाखिल करें। उक्त के सम्बन्ध में पत्रावली के अवलोकन हेतु कोई उपस्थित नहीं हुआ और न ही कोई तथ्य परक स्पष्टीकरण दाखिल किया गया। ज्ञातव्य है कि केवल 02 बिन्दओं पर करदेयता निर्धारित किये जाने का नोटिस में उल्लेख किया गया है। पूर्व में दाखिल स्पष्टीकरण में 28 बिन्दुओं का जवाब दाखिल किया गया है जिसमें बिन्दु सं0-09,11 व 23 को छोड़कर शेष बिन्दुओं करदाता का अपना मत प्रकट किया गया है जो नोटिस के बिन्दुओं से अलग से बिन्दु सं0-09,11 व 23 में नोटिस का जवाब देने के स्थान पर कतिपय तथ्यो की प्रमाणिकता व जांच रिपोर्ट प्राप्त न कराये जाने का उल्लेख किया गया है। जिसके लिए करदाता को उपस्थित होकर पत्रावली का परीक्षण करने हेतु उक्त नोटिस जारी की गयी थी। परन्तु करदाता उपस्थित नही हुए। अतः दाखिल स्पष्टीकरण सन्तोषजनक न पाये जाने के कारण अस्वीकार करते हुए निम्न प्रकार करदेयता, ब्याज व अर्थदण्ड आरोपित किया जाता है:-

1- यह कि करदाता द्वारा ग्लिसरीन, फैटी एसिड एवं परफ्यूमरी कंपाउंड से बने फिनिशिंग कैमिकल / एस०एम०पी० लिक्विड (एच०एस०एन०-3809) की खरीद प्रदर्शित की गयी है। जबकि इन वस्तुओं का कम्पनी के द्वारा निर्माण प्रक्रिया में कोई उपयोग नहीं है। खरीदों में सन्निहित आई०टी०सी० का उपयोग करते हुए अपनी करदेयता को सेटआफ किया गया है अथवा इन प्रदर्शित खरीदों में अन्तरतलित

आई०टी०सी० का रिफण्ड प्राप्त किया गया है। अतः करदाता द्वारा गलत ढंग से उपभोग किये गये आई०टी०सी० तथा उसके गलत तरीके से प्राप्त किये गये रिफण्ड को उसकी करदेयता, ब्याज व अर्थदण्ड सहित निर्धारित किया जाना अपेक्षित है।"

(Below is the English translation of the above Hindi portion)

On perusal of the said filed explanation, it is found that in the point Nos.9, 11 & 23 of the filed explanation, it has been mentioned that the desired details of the so called facts have not been given with respect to the Show Cause Notice regarding the charges, nor has been the inquiry report provided. It has also been mentioned that neither there is any reference of any evidence in the notice regarding the quashing of the e-way bill nor has it been provided and it is mentioned to provide time, in the interest of justice, for inspection and examination of records of the entire inquiry.

Therefore, in relation to the above, by issuing notice to the taxpayer for inspection and examination of the records on 06-09-2024 by reference No.ZD090824054924X dated 07-08-2024, it was expected that the taxpayer should appear and observe the point in question and submit explanation based on facts.

In relation to the above, no one appeared for inspection of the file nor any factual explanation was submitted. It is to be noted that notice mentions that the tax liability has been determined only on 02 points. In the explanation filed earlier, reply has been filed on 28 points in which except for point Nos. 09, 11 & 23, the taxpayer has expressed his side on the remaining points; for the separate points- point nos. 09, 11 & 23, instead of replying to the notice, it has been mentioned that the authenticity of certain facts and inquiry report have not been received regarding which the said notice was issued to the taxpayer to appear and examine the file. But the taxpayer did not appear, therefore, the explanation submitted, not being found satisfactory, is rejected and hence, the tax liability, interest and penalty are imposed as follows:-

1- that taxpayer has shown the purchase of Glycerine, fatty acid and finishing chemical/SMP Liquid (HSN-3809) made from perfumery compound, whereas, the company has no role in manufacturing process of these goods. By availing the ITC embodied in the purchases, tax liability has been set off or refund has been obtained for the ITC involved in the shown purchases. Therefore, for the the ITC wrongly availed by the taxpayer and refund obtained so

wrongfully, it is expected to determine his tax liability with the interest and penalty.

h. Being aggrieved by the impugned order dated September 12, 2024, the petitioner has filed the instant writ petition.

4. Sri Rahul Agarwal, learned counsel for the petitioner submits that the impugned order is only a copy-paste of the reply given by the petitioner to the show cause notice and the explanation provided therein has not been considered in a reasonable manner. The argument of the petitioner is that raw materials glycerine, fatty acid and perfumery compound are used for manufacture of fabrics which have not been dealt with in the order.

5. In fact, it is very clear that the entire show cause notice and the order are speculative in nature and are based on one survey report only using which the authorities have come to a conclusion that the said items are not being used without carrying out any test for manufacture of fabrics. Normally, this Court does not interfere in the order passed under Section 74 of the Act when there is a provision of statutory appeal under the Act. However, it is to be seen that the petitioner was not present on the date when the matter was to be heard and no further opportunity of hearing was given by the respondents to the petitioner to explain its reply in detail.

6. The explanation given by the petitioner in the affidavit annexing certificates of three experts has not been considered at all by the respondents and no reasons have been provided as to why the same are to be rejected. Once such an explanation has been provided, it was incumbent upon the respondents to have tested the fabrics to come to a conclusion that three raw materials were not used in the manufacture of fabrics. Without having done so and without granting an opportunity of fair hearing to the petitioner, fastening of such liability upon the petitioner is arbitrary and illegal and cannot be countenanced by this Court.

7. Counsel on behalf of the respondents has supported the show cause notice and the findings in the impugned order by submitting that the petitioner was not able to provide explanation on all points, and therefore,

the order under Section 74 of the Act fastens liability on the points that were not answered by the petitioner. However, he had no explanation as to why the fabrics were not examined to check whether the petitioner had used the raw materials in the manufacture of the same.

8. Before dwelling into the present factual matrix, this Court is of the view that one needs to examine the scope of natural justice as has been explained by a catena of judgements of the Supreme Court and this Court. The Supreme Court, in **State of Kerala v. K.T. Shaduli Grocery Dealer Etc.** reported in **(1977) 2 SCC 777**, while examining the provisions of the Kerala General Sales Tax Act, 1963, laid down the contours of the principles of natural justice. The relevant paragraphs of the said judgement read as under:

> *"2. Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions. It is true, as pointed out by this Court in Dhakeswari Cotton Mills Ltd. v. CIT [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317 : (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in Russel v. Duke of Norfolk [(1949) 1 All ER 109] :*
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> > *"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature*

> *of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."*

3. One of the rules which constitutes a part of the principles of natural justice is the rule of audi alteram partem which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties because as pointed out by this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : (1970) 1 SCR 457] "the aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice" and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative functions. This rule which requires an opportunity to be heard to be given to a person likely to be affected by a decision is also, like the genus of which it is a species, not an inflexible rule having a fixed connotation. It has a variable content depending on the nature of the inquiry, the framework of the law under which it is held, the constitution of the authority holding the inquiry, the nature and character of the rights affected and the consequences flowing from the decision. It is, therefore, not possible to say that in every case the rule of audi alteram partem requires that a particular specified procedure is to be followed. It may be that in a given case the rule of audi alteram partem may import a requirement that witnesses whose statements are sought to be relied upon by the authority holding the inquiry should be permitted to be cross-examined by the party affected while in some other case it may not. The procedure required to be adopted for giving an opportunity to a person to be heard must necessarily depend on facts and circumstances of each case."

9. The Court in the said judgment also dealt with the issue of disclosing the relevant documents that the respondent authorities are relying upon in

the show cause notice to the assessee. The relevant paragraph is delineated below:

> *"12. This Court further fully approved of the four propositions laid down by the Lahore High Court in Seth Gurmukh Singh v. Commissioner of Income Tax [(1944) 12 ITR 393 (Lahore HC)]. This Court was of the opinion that the Taxing Authorities had violated certain fundamental rules of natural justice in that they did not disclose to the assessee the information supplied to it by the departmental representatives. This case was relied upon by this Court in a later decision in Raghubar Mandal Harihar Mandal's case (supra) where it reiterated the decision of this Court in Dhakeswari Cotton Mills Ltd.'s case (supra), and while further endorsing the decision of the Lahore High Court in Seth Gurmukh Singh's case pointed out the rules laid down by the Lahore High Court for proceeding under sub-section (3) of Section 23 of the Income-tax Act and observed as follows:*
>
> > *"The rules laid down in that decision were these: (1) While proceeding under sub-section (3) of section 23 of the Income-tax Act, the Income-tax Officer is not bound to rely on such evidence produced by the assessee as he considers to be false; (2) if he proposes to make an estimate in disregard of the evidence, oral or documentary, led by the assessee, he should in fairness disclose to the assessee the material on which he is going to found that estimate; (3) he is not however debarred from relying on private sources of information, which sources he may not disclose to the assessee at all; and (4) in case he proposes to use against the assessee the result of any private inquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such an extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible."*
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> *It will thus be noticed that this Court clearly laid down that while the Income-tax Officer was not debarred from relying on any material against the assessee, justice and fair-play demanded that the sources of information relied upon by the Income-tax Officer must be disclosed to the assessee so that he is in a position to rebut the same and an opportunity should be*

given to the assessee to meet the effect the aforesaid information."

10. The Apex Court in **Mrs. Maneka Gandhi v. Union of India and another** reported in **(1978) 1 SCC 248** laid down the ratio in relation to the principles of *audi alteram partem* in the doctrine of natural justice. The relevant paragraph is delineated below:

> *"14. .....But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [(1949) 1 All ER 109] that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The audi alteram partem rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise."*

11. The Supreme Court in **Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi and Others** reported in **(1991) 2 SCC 716** held in paragraph 22 as under :

> *"22. ..... The omnipresence and omniscience (sic) of the principle of natural justice acts as deterrence to arrive at arbitrary decision in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumb or a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the persons and attendants circumstances. ...."*

12. The Supreme Court in **A.S. Motors Private Limited v. Union of India and Others** reported in **(2013) 10 SCC 114** held as under :

> *"8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the Courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the Tribunal and the rules and regulations under which it functions. A Court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are a legion. We may refer to only some of the decisions on the subject which should in our opinion suffice."*

13. In a recent judgement of the Supreme Court in **Madhyamam Broadcasting Limited v. Union of India and others** reported in **2023 SCC OnLine 366**, the Court reiterated the principles of natural justice that guarantee a reasonable procedure to be followed as per Article 14, 19 and 21 of the Constitution of India. The relevant paragraph of the said is delineated below:

"47. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case [See S.L. Kapoor v. Jagmohan; (1980) 4 SCC 379 "<u>The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary</u>"; also see Swadeshi Cotton Mills v. Union of India; A.I.R. 1981 S.C. 818]. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds [See Olga Tellis v. Bombay Municipal Corporation: (1985) 3 SCC 545; C.B. Gautam v. Union of India:(1993) 1 SCC 78; Sahara India (Firm), Lucknow v. Commissioner of Income Tax, Central-I: (2008) 14 SCC 151 and Kesar Enterprises v. State of Uttar Pradesh: (2011) 13 SCC 733]. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing."

14. The judgement of the Supreme Court in **State Bank of India and others v. Rajesh Agarwal and others** reported in **(2023) 6 SCC 1** further expanded the said principles, extract of which is provided below:

> *"36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power."*

15. The Supreme Court in a very recent judgement in **Singrauli Super Thermal Power Station v. Ashwani Kumar Dubey and others** (Civil Appeal No.3856/2022 decided on July 5, 2023) once again examined in detail the principles of natural justice and after placing reliance on the judgement in **Madhyamam Broadcasting Limited (supra)** held as follows:

> *15. A reading of the above, clearly indicates that the NGT is a judicial body and therefore exercises adjudicatory function. The very nature of an adjudicatory function would carry with it the requirement that principles of natural justice are complied with, particularly when there is an adversarial system of hearing of the cases before the Tribunal or for that matter before the Courts in India. The NGT though is a special adjudicatory body constituted by an Act of Parliament, nevertheless, the discharge of its function must be in accordance with law which would also include compliance*

with the principles of natural justice as envisaged in Section 19(1) of the Act.

16. In this context, it would be useful to refer to what is known as the 'official notice' doctrine, which is a device used in administrative procedure. Although an authority can rely upon materials familiar to it in its expert capacity without the need formally to introduce them in evidence, nevertheless, the parties ought to be informed of materials so noticed and be given an opportunity to explain or rebut them. The data on which an authority is acting must be apprised to the party against whom the data is to be used as such a party would then have an opportunity not only to refute it but also supplement, explain or give a different perspective to the facts upon which the authority relies. This has been explained by Schwartz in his work on Administrative Law. The aforesaid doctrine applies with greater force to a judicial / adjudicatory body.

Therefore, applying the aforesaid principle to the cases that come up before the NGT, if the NGT intends to rely upon an expert Committee report or any other relevant material that comes to its knowledge, it should disclose in advance to the party so as to give an opportunity for discussion and rebuttal. Thus, factual information which comes to the knowledge of NGT on the basis of the report of the Committee constituted by it, if to be relied upon by the NGT, then, the same must be disclosed to the parties for their response and a reasonable opportunity must be afforded to present their observations or comments on such a report to the Tribunal.

17. It is needless to observe that the experts' opinion is only by way of assistance in arriving at a final conclusion. But we find that in the instant case the report of the expert Committee as well as the recommendations have been made the basis of the directions and such an approach is improper.

16. The Division Bench of this Court in **S.R. Cold Storage v. Union of India and Others** reported in **2022 SCC online (All) 550; {[2022] 448 ITR 37 (All)}** has also held as follows:

"25. The first and foremost principle of natural justice is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be

put on notice of the case before any adverse order is passed against him. It is an approved rule of fair play.

26. The principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice.

27. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

28. Natural justice has been variously defined by different judges, for instance a duty to act fairly, the substantial requirements of justice, the natural sense of what is right and wrong, fundamental justice and fair-play in action. Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" that is no man shall be a judge in his own cause. The second rule is "audi alteram partem", that is, "hear the other side". A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, i. e., "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice."

17. One may also refer to a judgement in **M/s Eastern Machine Bricks and Tiles Industries v. State of U.P. and Others, Neutral Citation No.- 2024:AHC:3222** penned by one of us while sitting in Single Bench, wherein the Court, after examining the umpteen judgements in relations to the principles of natural justice, held as follows:

> *10. The common thread that runs across these judgments is that although the principle of audi alteram partem can evolve itself given the facts and circumstances of each case, its significance and applicability is universal. Audi alteram partem, which is a part of the doctrine of natural justice, finds its roots primarily in the constitutionally guaranteed ideal of equality. This principle ensures that no one is condemned, penalized, or deprived of their rights without a fair and reasonable opportunity of hearing. It acts as a safeguard against arbitrary decision-making, upholding the principle of due process while also providing a crucial foundation for just and equitable legal or administrative proceedings.*
>
> *11. Furthermore, the significance of the principal of audi alteram partem is deeply entrenched in the foundational tenets of natural justice. The phrase, denoting "hear the other side," is emblematic of the sacrosanct right vested in individuals to be accorded a fair and impartial hearing before the adjudication of their rights or interests. This cardinal principle operates as a bulwark against arbitrariness and the capricious exercise of authority, mandating that decisions be reached only subsequent to a comprehensive and equitable deliberation of all relevant contentions. It is, in essence, the sine qua non of due process, standing as an unwavering sentinel against the potential tyranny of unchecked power. The judicious application of audi alteram partem not only upholds the sanctity of individual freedom but also fortifies the integrity of legal proceedings, fostering a milieu where justice is not merely meted out, but is perceived to be done through a conscientious consideration of diverse and adversarial perspectives.*

18. In light of the above, one may summarise the salient features that emerge from the examination of the above judgements -

a) *audi alteram partem* is a part of the doctrine of natural justice and requires a quasi judicial body to provide an opportunity of hearing to a person before fastening a liability upon him;

b) the above principles of *audi alteram partem* act as a safeguard against arbitrary decision making and provide for a crucial foundation for just equitable, legal and administrative proceedings;

c) decisions by a judicial authority should only be made after consideration and proper deliberation of all relevant contentions raised by the assessee and failure to do so would amount to decision making that is arbitrary and illegal in law;

d) documents that are relied upon by the department are necessarily required to be provided to a person upon whom a liability is being fastened so that, the person can deny and/or dispute the said documents. Non production of these documents to the assessee would amount to violation of the principles of natural justice unless the authority can show that the documents were not necessary and did not form part of the order passed wherein the liability was fastened on the assessee.

e) rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries.

f) a court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action.

19. Coming to the present writ petition in hand, three factors may be highlighted by this Court. Firstly, the impugned order merely copies the reply provided by the petitioner which leads to a conclusion that there was non application of mind by the respondent authority. Secondly, in the reply to the show cause notice, certain documents and reports were sought for by the assessee, which had been relied upon by the authorities. However,

without providing the same to the assessee, the authorities proceeded to impose the tax liability and penalty. Thirdly, the explanation provided by the petitioner with regard to the use of the raw materials in the process of the manufacture by the petitioner supported with opinions of the experts were simply brushed aside by the respondent authority, who did not even examine whether the said raw materials had been used in manufacture of the final products which were fabrics. Without having done so and without granting an opportunity of fair hearing to the petitioner, the liability that has been imposed upon the petitioner appears to be patently illegal and without any authority in law.

20. As discussed above, non production of certain documents to the petitioner that were relied upon by the authorities, coupled with the manner in which no proper opportunity of hearing was granted to the petitioner leads us to the conclusion that severe prejudice has been caused to the petitioner. Ergo, the impugned order cannot be sustained and is liable to be quashed and set aside.

21. Accordingly, the impugned order dated September 12, 2024 is quashed and set aside with a direction upon the respondent authorities to examine the fabrics, provide a copy of the report to the petitioner, grant an opportunity of hearing to the petitioner and thereafter pass a reasoned order in the same. We make it clear that with regard to E-way bills on which liability has also been fastened, an opportunity of hearing shall be granted to the petitioner.

22. With the above directions, the writ petition is allowed.

18.11.2024
P.P./Kuldeep

(Vipin Chandra Dixit, J.) (Shekhar B. Saraf, J.)