

GIB/JK/NAVNEET/17.03.2021/HC-172

High Court Category : PRINCIPLES OF NATURAL JUSTICE

State : Jammu & Kashmir

Order No.: GIB/JK/NAVNEET/17.03.2021/HC-172

Name of Entry :
NAVNEET R. JHANWAR

Date : 17-03-2021

Breif Issue :

FACTS OF THE CASE

Navneet R. Jhanwar ("the Petitioner") having become entitled for refund of excess tax paid in terms of Section 54 of the Central Goods and Services Tax Act, 2017 ("CGST Act") submitted a refund application in FORM-GST-RFD-01 before the State Tax Officer ("the Respondent"), wherein the Respondent instead of directing the refund issued a Show Cause Notice ("SCN") calling upon the Petitioner to show cause as to why the refund claim should not be rejected for the reason that the claim for refund is belated having been filed after the expiry of two years from the relevant date, as per explanation 2 in Section 54 of the CGST Act and that in the instant case the period had expired in April, 2020.

Subsequently the reply to SCN was filed by the Petitioner explaining the delay. Relied upon Notification No.35/2020-Central Tax, dated April 3, 2020 and Notification No.55/2020-Central Tax, dated June 27, 2020, whereby on account of lockdown due outbreak of corona virus pandemic, time limit/due date for various compliances was extended upto August 31, 2020. The explanation on delay by the Petitioner was accepted and accordingly, the refund application of the Petitioner was processed.

However, the Respondent without serving further SCN upon the Petitioner, passed the refund rejection order dated December 2, 2020 ("Refund rejection order") on the grounds that were not proposed in the SCN and no opportunity of hearing was provided regarding the same.

Being aggrieved by Refund rejection order, the Petitioner has filed this petition.

ISSUE OF THE CASE

Whether the Refund rejection order can be passed without giving an opportunity of being heard?

Decision of Advance Ruling Authority :**DECISION**

It is true that any order passed by the adjudicating authority including an order passed under Section 54 of the Act read with Rule 92 of the Rules of 2017 is appealable before the appellate authority and the appellate authority is empowered to make such further enquiry, as may be necessary and pass such order as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall have no power to remand the case to the adjudicating authority that has passed the impugned order. However, contention of learned counsel for the petitioner is that the impugned order is not only cryptic but in sheer violation of the principles of natural justice.

It is trite that alternative remedy is not a complete bar to the entertaining of writ petition filed for enforcement of any of the fundamental rights or where there has been a violation of principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of statute are under challenge.

As mandated by Rule 92 and is also the demand of principles of natural justice, no notice of show cause was given to the petitioner to explain as to why his claim for refund may not be rejected on merits. A unilateral decision was taken and the petitioner was conveyed the outcome of such decision i.e. rejection of the claim of the petitioner - Learned counsel for the petitioner is correct that with regard to the passing of order of rejection of the refund claim of the petitioner on merits, he was never put on notice nor was any opportunity of being heard ever afforded to him. It is, thus, apparent that the impugned order passed by the adjudicating authority i.e. respondent No.1 herein traverses beyond the scope of show cause notice, which was served upon the petitioner to show cause as to why his claim should not be rejected having been filed beyond limitation.

Thus, impugned order of rejection of refund claim of the petitioner is not in conformity with the proposal made in the show cause notice that was served upon the petitioner when the adjudicating authority found it barred by limitation.

The case remanded back to respondent No.1 for passing order afresh after putting the petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard - **petition allowed by way of remand.**