

Unnatural Injustice?

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By Vijay Kumar

THE National Anti-Profiteering Authority passed an order on November 16, 2018 -[2018-TIOL-13-NAA-GST](#)

. This was an order passed by a four-member bench but was actually heard by three Members. The Bombay High Court in its order -[2019-TIOL-2419-HC-MUM-GST](#) Dated 01 10 2019 observed,

We conclude that when the three members of the Authority had heard the Petitioner and participated in the entire hearing, the collectively signed decision, when the fourth member joined only for signing the order has resulted in violation of the principles of natural justice and fairness, and is liable to be set aside.

The four members were Commissioner rank officers of GST.

In [2021-TIOL-179-SC-GST](#), the Supreme Court held,

The Commissioner's understanding that an opportunity of being heard was at the discretion of the Commissioner is therefore flawed and contrary to the provisions of Rule 159(5). There has, hence, been a fundamental breach of the principles of natural justice.

In [2022-TIOL-961-HC-KOL-GST](#), the Calcutta High Court observed,

the department should ensure that an opportunity granted to the assessee is not reduced to mere formality and the opportunity should be an effective opportunity so that the principles of fairness is complied with.

we are satisfied that the principles of natural justice had been violated even at the stage of commencement of the proceeding.

In [2022-TIOL-918-HC-AHM-GST](#), the Gujarat High Court observed,

Thus, the respondent Authority has proceeded to pass the order for cancellation of registration on new material or facts which were neither formed part of the show cause notice nor the same were disclosed to the writ applicant. The aforesaid action of the respondent authority is in breach of violation of principles of natural justice. The writ applicant has been deprived of the reasonable opportunity without putting to their notice about such allegations, more particularly when the cancellation of registration under the GGST Act results into civil and criminal action. Thus, we find that the respondent authority has failed to adhere to the basic principles of natural justice and such action of the respondent authority is illegal and is required to be interfered with.

In an interesting case before the Madras High Court recently [2022-TIOL-987-HC-MAD-GST](#),

the petitioner had made an application seeking registration in accordance with Section 22 r/w Section 25 of the CGST Act and Rule 8 of the CGST Rules. The registration sought was in respect of a rice mandi, the receipt of the application is duly acknowledged and physical verification (pv) was also duly undertaken.

Thereafter, a notice came to be issued by the Superintendent, GST seeking a clarification with respect to the application for registration. The clarification sought was that the application did not enclose the details of **principal place of business** of the petitioner. The application in which the additional information has sought is as follows:

Principal Place of Business - Address - Others (Please specify) - P.V. officer reported that PV is verified and found in order (except proof of PPOB not uploaded) please clarify.

The petitioner duly responded uploading a copy of the rental / lease deed duly registered in the office of the Sub-Registrar, Krishnagiri as proof of principal place of business.

The impugned order has, however, come to be passed rejecting the application by way of a monosyllabic order dated 13.05.2022 simply - **rejected** - without assigning any reasons or explanation for rejection thereof.

The High Court observed that an order of this nature is indefensive insofar as it is non-speaking, arbitrary and evidently has not taken into account the explanation furnished by the petitioner.

The Learned Counsel for the department referred to Rule 9(4), particularly the deployment of the word **may** herein, that according to him, grants discretion to the authority to assign reasons.

Rule 9(4) of the Central Goods and Services Tax Rules, 2017 is extracted below:

9. Verification of the application and approval

.....

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) or where the proper officer is not satisfied with the clarification, information or documents furnished, he **may**, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

The High Court noted that it was evident, that the word '**may**' only refers to the discretion to reject and not to **blatantly violate** the principles of natural justice. If the assessing authority is inclined to reject the application, which he is entitled to, he must assign reasons for such objection and adhere to proper procedure, including due process.

The High Court set aside the impugned order and directed that the petitioner be heard on the objection raised and orders be passed on the application for registration dated 13.05.2022 within a period of four weeks.

Somebody wants to do business and pay tax and for that he is required to be registered with the department. The officers of the department should, if they have a little commercial or national interest should welcome such a person, for he is a prospective taxpayer and a possible victim. When a goose walks into your office and tells you that it wants to lay a golden egg every day for you, do you ask it to go and bring its Aadhaar card? Or better still, threaten it with dire consequences!

Here, the petitioner had filed proof of his principal place of business. The Physical Verification Officer verified the premises and found it in order. Yet his application was rejected without any reason being revealed. What did the department achieve? Why do senior experienced educated officers refuse to follow primary principles of natural justice? Does it add to the stature of the department that even prospective taxpayers have to approach High Courts with the complaint that adjudication orders are passed without following the principles of natural justice? Is it contempt for the taxpayer who pays your salary? Is it contempt for the law? Or is it just convenience?

Until Next week