

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 5460/2020

M/s. Chandni Crafts, Through Its Proprietor Ghanshyam Agarwal,
Aged 51 Years S/o Bhanwarlal Agarwal, C-11/b, Marudhara
Industrial Area, 1st Phase, Basni, Jodhpur (Raj.)

-----Petitioner

Versus

1. Union Of India, Through Its Revenue Secretary,
Department Of Revenue, Ministry Of Finance, 128-A North
Block, New Delhi.
2. The Assistant Commissioner, Central Goods And Service
Tax, Division-A, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. Anjay Kothari
Mr. Mukesh Gurjar
Mr. Amit Sharma

For Respondent(s) : Mr. Kuldeep Vaishnav.

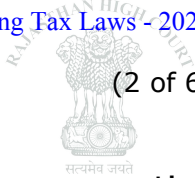
**HON'BLE MR. JUSTICE ARUN BHANSALI
HON'BLE MR. JUSTICE ASHOK KUMAR JAIN**

Order

17/01/2023

This writ petition has been filed by the petitioner aggrieved against the orders dated 29.10.2018 (Annex.2) passed by the Assistant Commissioner, Central Goods & Service Tax, Division-A, Jodhpur and order dated 15.01.2020 (Annex.3) passed by the Commissioner of Central Excise (Appeals) rejecting the appeal filed by the petitioner.

It is, inter-alia, indicated in the petition that the petitioner claimed refund of accumulated input tax credit on account of export of goods under letter of undertaking in terms of the provisions of Section 54(3) of the Central Goods & Service Tax

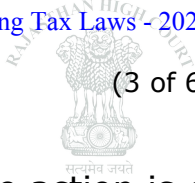


Act, 2017 ('CGST Act') amounting to Rs.6,07,553/- and Rs.8,78,605/- for the months of July, 2017 and August, 2017. The Assistant Commissioner issued provisional refund order dated 26.09.2018, partially sanctioning refund claims to the petitioner and rejecting the refund claim for the Integrated Goods & Service Tax ('IGST') and Central Goods & Service Tax ('CGST'). Whereafter, the refund sanction / rejection orders dated 29.10.2018 (Annex.2) were passed, inter-alia, rejecting the claims of the petitioner.

Feeling aggrieved, the petitioner filed appeal before the Commissioner (Appeals), who by order dated 15.01.2020 (Annex.3), rejected the appeal filed by the petitioner.

It is submitted by learned counsel for the petitioner with reference to provisions of Section 54(3) of the CGST Act and Rule 92 of the CGST Rules that the refund could not have been rejected by the authority without providing opportunity of hearing, inasmuch as, the provisions of Rule 92(3) envisage issuance of notice in Form GST RFD-08 requiring the applicant to furnish a reply in Form GST RFD-09 and after considering the reply, order can be made in Form GST RFD-06 and that no application for refund shall be rejected without giving the applicant an opportunity of being heard. However, the said provision was violated by the authority.

The appellate authority by its impugned order on the issue of violation of the principles of natural justice though held in favour of the petitioner, by observing that the natural justice has been duly followed during the appeal proceedings and the case is heard on the basis of merits, rejected the appeal.



It is submitted that the action is contrary to the provisions of the Rules and the orders having been passed in violation of principle of natural justice deserves to be set-aside.

Reliance has been placed on *World Home Textiles Inc v. Additional Commissioner (Appeals) & Anr.* : 2020 SCC Online Mad 25916.

Learned counsel for the respondents vehemently opposed the submissions. It was submitted that the plea raised by the petitioner seeking refund had no substance and therefore, both the authorities were justified in rejecting the claim of the petitioner for grant of refund and therefore, the order impugned does not call for any interference.

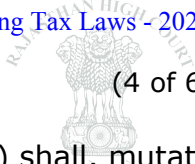
It was submitted that as the appellate authority has considered all the issues sought to be raised by the petitioner, merely because the original authority did not provide opportunity of hearing to the petitioner, cannot be a reason for questioning the validity of the orders on the said count alone and therefore, the petition deserves dismissal.

We have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The provisions of Rule 92(3) of the CGST Rules, which deals with order sanctioning refund, inter-alia, provides as under:-

“Rule 92. Order sanctioning refund.-

(3)- Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the



provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed :

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard."

The provisions are clear and specific requiring issuance of notice in Form GST RFD-08, seeking reply and making an order thereafter.

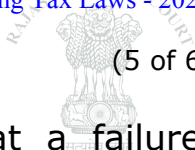
The proviso further emphasizes that the refund shall not be rejected without giving the applicant an opportunity of being heard. The provisions by their very language are mandatory and apparently, the adjudicating authority has failed to comply with the said statutory provision.

The appellate authority, when the plea was raised by the petitioner in appeal, came to the following conclusion :-

"5.2 On the issue of Principle of Natural justice, the appellant has contended that the department has decided the case without issuing any show cause notice or providing opportunity of personal hearing. I find that the correspondence made with the adjudicating authority regarding the issuance of Show Cause Notice / Deficiency Memo and providing any opportunity for personal hearing to the appellant did not result in any reply from him. Moreover, both the impugned orders are not bearing the serial numbers of the relevant Show Cause Notices in the columns so provided for this purpose. As such I am of the view that natural justice has not been followed by the adjudicating authority. Nevertheless, the course of natural justice has been duly followed during appeal proceedings. Ample opportunities have been given to hear the case of the appellant and put forward all the facts and figures. All the submissions of the appellant have been keenly gone through and discussed and the case is heard on the basis of merits of the case.

In view of above discussion and finding, I upheld the impugned order and reject the appeal filed by the appellant."

The authority conclusively found that the natural justice had not been followed by the adjudicating authority, however, on the basis that natural justice was duly followed during appeal proceedings, did not interfere with the order on account of the said aspect of violation of principle of natural justice.



It is well settled that a failure of natural justice in the authority of first instance cannot be cured by sufficiency of natural justice in the appellate body, else the same would encourage the tendency of the authorities to give a short shrift to the proceedings before them.

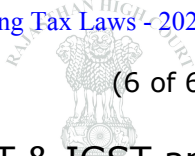
In the case of *World Home Textiles (supra)*, the Madras High Court came to the following conclusion :-

"7. When Rule 92(3) of the CGST Rules, 2017, makes it clear that hearing is mandatory before rejecting any application for refund, the second respondent as well as the first respondent in their respective impugned orders have arbitrarily and by total non application of mind to the said Rule has rejected the petitioner's application for refund. Therefore, the refund application submitted by the petitioner will have to be considered afresh on merits and in accordance with law after giving sufficient opportunity of hearing to the petitioner by the second respondent."

The Hon'ble Supreme Court in *63 Moon Technologies Ltd. v. Union of India* : (2019) 18 SCC 401, pointed out that breach or defect in observing Rules of natural justice in the trial administrative body cannot generally be cured by observing natural justice at the appellate stage, particularly when a clear statutory right has given at the trial stage of an assessment of compensation first by the prescribed authority and then a right of appeal to the appellate Tribunal.

In view of the above fact situation, wherein admittedly the principles of natural justice have been violated by the adjudicating authority and the appellate authority only on account of the fact that it had provided opportunity of hearing, did not interfere with the order of the adjudicating authority, both the orders cannot be sustained.

Consequently, the writ petition filed by the petitioner is allowed. The orders dated 29.10.2018 (Annex.2) to the extent of



rejecting the refund of CGST & IGST and the appellate order dated 15.01.2020 (Annex.3) are quashed and set-aside.

The matter is remanded back to the adjudicating authority to follow the provisions of Rule 92(3) of the CGST Rules and thereafter pass an appropriate order in accordance with law.

(ASHOK KUMAR JAIN),J

(ARUN BHANSALI),J

24-Rmathur/-