

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-26563-2021

Date of Decision:-13.03.2023

Fiscalnote India Pvt. Ltd.

....Petitioner

Vs.

Commissioner of Central Tax and anr.

....Respondents

**CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sandeep Gilana, Advocate with
Mr. Tushar Sharma, Advocate
for the petitioner

Mr. Alankrit Bhardwaj, Sr. Panel counsel
For the respondent.

Ritu Bahri, J. (Oral)

Petitioner-Company has approached this Court seeking quashing of orders bearing number ZT0605210112439 and ZS0605210137340 (P-2).

Learned counsel for the petitioner states that with respect to the decision on the refund applications dated 05.03.2021 and 12.03.2021 (P-6 and P-8), the petitioner was never given personal hearing before passing the final order on 08/10.05.2021 (P-2 colly). The petitioner was given notice to appear on 30.04.2021 and 03.05.2021, pursuant to above refund applications made by him. Petitioner gave his reply to the said notices on 29.04.2021 vide Annexure P-11 and P-12 respectively) requesting therein that the petitioner be allowed to attend the personal hearing through Video Conferencing keeping in view ongoing COVID 19 pandemic.

But instead of giving opportunity of hearing to the petitioner through Video Conferencing, the respondents passed the final order (P-2 colly) without giving any opportunity to the petitioner.

The grievance of the petitioner before this Court is that before passing the final order, the petitioner should have been heard, in view of Rule 92 (3) of CGST Rules, 2017

On notice of the petition, a short reply by way of affidavit of P.R. Lakra, Commissioner of CGST, Commissionerate, Gurugram Haryana has been filed on behalf of the respondents on 04.07.2022 and in para it has been stated that the petitioner was granted personal hearing on 30.04.2021 at 3.30 PM and 03.05.2021 at 2 PM vide show cause notice (RFD) dated 20.04.2021 but the petitioner did not appear. It has further been stated that the petitioner did not provide email of their authorized representatives, which was required to send the link. The Adjudicating Authority processed the refund claim in accordance to the provisions of Section 54 of CGST Act, 2017 and CGST Rules, 2017 after giving due consideration to the replies filed by the petitioner.

Heard.

In the present case, it is not in disputed that the petitioner was granted time to appear before the Competent authority but due to COVID 19 situation in the country, he could not appear and prayed that the petitioner be allowed to attend the personal hearing through Video Conferencing. The respondents have admitted this fact that petitioner did not appear when the final order was passed. Reference at this stage can be made to Rule 92 (3) of CGST Rules, 2017 which reads as under:-

“Rule 92

(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 above provision is very clear that any application for refund shall not be rejected without giving the applicant an opportunity of being heard. The rule is mandatory and the department is bound to give opportunity of hearing to the petitioner before passing impugned order (P-2 colly). The respondents are justifying their order on the sole ground that the petitioner did not appear.

Keeping in view the above rule, the present petition is allowed and orders bearing number ZT0605210112439 and ZS0605210137340 (P-2 colly) are set aside. The matter is remanded back to respondent No. 2 to pass fresh order on the refund applications of the petitioner after giving opportunity of hearing to the petitioner, in view of Rule 92 (3) of CGST Rules, 2017.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

13.03.2023
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No