Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 3407 OF 2024**

ATV Projects India Limited,
A Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 1201, Windfall Building, Sahar Plaza Complex, Andheri Kurla Road, Andheri (East), Mumbai – 400 056. …Petitioner

***VERSUS***

1. Assistant Commissioner of State Tax, Investigation, (BHY-INV-D-002), MTNL Building, 3rd Floor, Bhayandar (West), Maharashtra-401 101

2. Commissioner of State Tax, Maharashtra State, Mumbai 8th Floor, Vikrikar Bhavan, Mazgaon, Mumbai-400 010.

3. Joint Commissioner of State Tax (Appeals), Bhayander, (BHY-APP-F-001), MTNL Building, 3rd Floor, Bhyandar (West), Maharashtra-401 101.

4. The State of Maharashtra 8th Floor, Vikrikar Bhavan, Mazgaon, Mumbai, Maharashtra-400 010.

5. Superintendent, Range I, Dn-V, CGST & CEX, Mumbai East, 10th Floor, Lotus Info Center, Parel Station Road, Parl (East), Mumbai-400 012.

**6.** Joint Commissioner of State Tax (ADM)
Thane Rural Division Bhayander,
1st Floor, MTNL Telephone Exchange
Building, Phatak Road, Bhayandar (West),

**7.** Additional Commissioner of Central Tax,
10th Floor, Lotus Info Center, Parel
Station Road, Parel (East),
Mumbai-400 012. …Respondents

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APPEARANCES-

**Mr Prithviraj Choudhary**, *a/w Arnab Roy & Aniket Trivedi, i/b, Vaish Associates, for the Petitioner.*

**Ms Jyoti Chavan, Addl GP**, *with* **Nazia Shaikh**, **AGP**, *for the Respondent-State.*

**Ms Maya Majumdar**, *with Niyali Mankad, for the Respondents No. 5 & 7.*

**Mr Premjeet Rannaware**, *Asst. Commissioner MGST Dept, Bhayander.*

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**CORAM : M.S.Sonak & Jitendra Jain, JJ.**

**DATED :** 07 October 2024

**ORAL JUDGMENT (***Per MS Sonak J***):-**

**1.** Heard learned Counsel for the parties.

**2.** Rule. The rule is made returnable immediately at the request and consent of the learned Counsel for the respective parties.

**3.** This petition challenges the order dated 17 January 2024 made by the Assistant Commissioner of State Tax for the

Financial Year 2017-2018 under Section 74 of the Maharashtra Goods and Service Tax Act, 2017 ("**MGST Act**").

**4.** The learned Counsel for the Petitioner submits that in the Reply filed on behalf of the Petitioner to the show cause notice, the Petitioner has stated explicitly that the Petitioner wishes to be heard in person. Still, the impugned order has been made without hearing the Petitioner, and this amounts to a breach of the provisions of Section 75(4) of the MGST Act.

**5.** Learned Counsel for the Petitioner relies upon **Kuehne Nagel Private Limited Vs The State of Maharashtra & Ors** and **Hydro Pneumatic Accessories India Pvt Ltd Vs The Assistant Commissioner of State Tax, Mulund West & Anr.** to submit that in similar circumstances, orders made without granting the assessee an opportunity of hearing were struck down by this Court.

**6.** Ms Chavan learned Additional Government Pleader for Respondents Nos. 1, 2, and 3, and Ms Majumdar, learned Counsel for Respondents Nos. 5 and 7, defended that the impugned order is based on the reasoning reflected there. They submit that no prejudice is caused to the Petitioner because the Reply filed by the Petitioner was duly considered before making the impugned order.

**7.** The rival contentions now fall for our determination.

**8.** The record shows, and it is not disputed, that the impugned order was made without granting the Petitioner an opportunity to be heard. In the Reply filed by the Petitioner to the show cause notice, the Petitioner specifically sought such an opportunity to be heard before any order could be made in the matter. This should not have been denied, given the provisions of Section 75(4) of the MGST Act. The alleged consideration of the petitioner's reply is not a substitute for denying the opportunity of hearing contemplated by the statutory provision.

**9.** Section 75(4) of the MGST Act reads as follows:-

> "**General provisions relating to determination of tax**
>
> **75** (1) .....
>
> (2) .....
>
> (3) .....
>
> (4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

**10.** The above provision contemplates the opportunity of hearing where a request is received in writing from the person chargeable with tax or penalty, or any adverse decision is contemplated against such person. The Petitioner, in this case, had requested in writing an opportunity for a hearing. In any event, the impugned order is adverse to the interest of the Petitioner. On both these counts, the impugned order should have been preceded by an opportunity of hearing. On this short ground, the impugned order must be set aside.

**11.** In **Kuehne Nagel Private Limited** (supra) and **Hydro Pneumatic Accessories India Pvt Ltd** (supra), Coordinate Benches of this Court, in almost identical circumstances, have interfered with orders that were made without compliance with the requirement of Section 75(4) of the MGST Act. Even in those cases, no opportunity for a hearing was granted to the Petitioners. This was considered sufficient to set aside the orders impugned in those Petitions and for a remand to make fresh orders after hearing the Petitioners.

**12.** Accordingly, for all the above reasons, we dispose of this Petition by making the following order:-

**ORDER**

(i) The impugned order dated 17 January 2024 is quashed and set aside;

(ii) Consequently, the recovery notice dated 6 September 2024 based upon the above-impugned order will not survive and, in any event, is quashed and set aside.

(iii) The 1st Respondent must grant the Petitioner an opportunity of hearing and only thereafter make the Assessment Order according to law.

(iv) The above exercise must be completed as expeditiously as possible and in any event before 31 December 2024.

**13.** All contentions of all parties are expressly left open.

**14.** The Rule is made absolute in the above terms. There shall be no order for costs.

**(Jitendra Jain, J)** **(M. S. Sonak, J)**