IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7381/2024

Jai Durga Security Force .Vs. Finance Departmetn, thr. Its Secretary, Mumbai and anr.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. A. Kumar, Advocate for petitioner.
Mr. S. S. Doifode, A.G.P. for respondent Nos. 1 and 2.

CORAM : ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : NOVEMBER 7, 2025.

On 08.08.2025, following order was passed:

"The argument is that while passing the impugned order, personal hearing is not given to the petitioner.

02. Having heard the learned Counsel for the petitioner, we find that respondent No.2-Assistant Commissioner of State Tax has issued 'show cause notice' under Section 73(1) of the CGST/MGST Act, 2017. The petitioner was called upon to submit reply by 10th June, 2024.

03. The order impugned indicates that the petitioner failed to file reply and also failed to pay tax in terms of the 'show cause notice. Accordingly, the petitioner is called upon to pay amount of tax as assessed in the impugned order.

04. The argument is that despite issuing notice, opportunity of hearing ought to have been given by respondent No.2 before passing adverse order. In support, the learned Counsel for the petitioner has relied upon the provisions of Section 75(4) of the Act. It provides that an opportunity of hearing shall be given wherein an adverse decision is contemplated against a person.

05. The question here is, whether the opportunity of hearing was given. Prima facie, when respondent No.2 has vide 'show cause notice' dated 09/05/2024 called upon the petitioner to file reply by 10/06/2024, in our view, he was, in a way, given an opportunity of hearing. Nonetheless, since the argument is advance that despite

> *such notice, the law contemplates that another opportunity of hearing ought to be given in terms of Section 75(4) of the Act.*
>
> *06. Issue notice to the respondents, returnable on 22d August, 2025.*
>
> *07. The petitioner, however, shall deposit an amount of Rs.50,000/- to show bona fides. The amount shall be deposited before the next date of hearing, failing which, the petition shall stand dismissed without further reference to the Court."*

2. Thus, the question is whether opportunity of hearing ought to have been given to the petitioner in terms of Section 75(4) of the Act of 2017.

3. Counsel for the petitioner has invited our attention to the order passed by Coordinate Bench of this Court in ***Kloud Data Labs (P.) Ltd. Vs. Deputy Commissioner of Income Tax [Writ Petition No.1952/2024, dated 05.08.2024]***, wherein in identical situation, the Court held thus:

> *"6. This would categorically demonstrate, that the principles of natural justice were inbuilt in the statutory provisions itself and mandate an opportunity of hearing, either (1) Where a request in writing is received from the person chargeable with tax or penalty or (2) where any adverse decision is contemplated against such person. Even presuming, that no reply was given by the petitioners, that, however, did not prevent it from justifying the self-assessment for the period July, 2017 to March, 2018, submitted by him to the GST authorities, for which, an opportunity of hearing was necessary. The notice dated 01.11.2021 (page 41), indicates, that no date, time or venue was indicated for personal hearing, on the contrary, it was stated to be not applicable. The subsequent notice dated 14.12.2021 (page 45), 02.12.2022 (page 46) as well as the screen shot of the GST portal dated 26.2.2024, all depict the same position, considering which, it is apparent, that the requirement of Section 75(4) of the GST Act, 2017 has not been complied with. This being the position, we are not*

> *entertaining the plea raised by Mr. Damle, learned Assistant Government Pleader of availability of an appeal under Section 107 of the GST Act available to the petitioners."*

4. As could be seen, the facts in the said case were identical, in the sense, the notice issued to the petitioner indicated no date, time or venue as regards personal hearing. Rather, the column against the date, time and venue were said to be not applicable. That being so, argument of the respondents that opportunity of filing reply was given to the petitioner, who failed to file reply and thus will serve the purpose of giving opportunity of hearing, is contrary to what has been provided under Section 75 (4) of the Act, 2017, which requires opportunity of hearing being given to the petitioner in two contingencies viz. (i) Where a request in writing is received from the person chargeable with tax or penalty or (ii) where any adverse decision is contemplated against such person. The petitioner's case falls in the second category.

5. At this stage, the learned A.G.P. has invited our attention to notice dated 09.05.2024 issued by respondent No.1 saying that if the petitioner wishes to have a personal hearing, he may appear on a fixed date. The notice further indicates that the petitioner may appear on the date and at the time mentioned in the notice, however, the date and time has been not mentioned in the entire notice.

6. That being so, merely because such an expression has been used in the notice enabling the petitioner to appear on a date and time which is not mentioned in the notice, one cannot say that there is due compliance of Section 75(4) of the Act of 2017. The respondents failed to give opportunity of hearing in terms of Section 75(4) of the Act of 2017. The order impugned, therefore, is liable to be quashed and set aside.

7. The petition is, accordingly, partly allowed. The impugned order dated 13.06.2024 passed by respondent No.2 is set aside. The adjudication proceedings stand restored to file of respondent No.2 for decision, in accordance with law and what has been stated in the body of the order.

The petitioner shall appear before respondent No.2 on 19.11.2025 at 11:00 a.m.

The petition is disposed of in the above terms.

(JUDGE) **(JUDGE)**

Kahale