

TAX INFO

Dated 22/12/2022

Latest update on GST Law: **Opportunity of personal hearing is mandatory before passing any adverse demand order against the taxpayer** as given in judgement by **Gujarat High Court**.

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Name of Petitioner	M/s. Hitech Sweet Water Technologies Pvt. Ltd.
Name of Respondent	State Of Gujarat
Court	Gujarat High Court
Date of Judgement	06.10.2022
Appeal No.	R/Special Civil Application No. 14347 Of 2022

Brief Facts of the Case Law:

The petitioner is a manufacturer of water filter machines. Three SCN's for the respective years in form GST DRC-01 dated 13.03.2022 came to be issued to the petitioner for the years 2017-18, 2018- 19 and 2019-20 and amount of Rs.5,46,79,672/-, Rs.2,33,65,984/- and Rs.1,35,60,109/-, was claimed from the petitioner. Thereafter, the authorities passed final orders determining amounts of Rs.6,88,92,903/-, Rs.2,36,64,166/- and Rs. 1,09,47,450/- for the three respective years. The petitioner had challenged the orders, each dated 19.04.2022 in respect of financial years 2017-18, 2018-19 and 2019-20, whereby with respect of three years, the Department called upon the petitioner to pay amount of tax under Section 73(9), to pay interest under section 50 and further to pay 10% penalty Section 73(9) of the GGST Act, 2017. It was provided that unless the said amounts are paid within 30 days, the authorities will proceed to recover by taking resort to Sections 78 and 79 of the Act. The petitioners have also challenged the show-cause notices dated 13.03.2022 for the same three financial yearon the ground that the order to be passed in gross violation of principles of natural justice inasmuch as the petitioner was not granted opportunity of being heard.

By placing reliance on different judgments including **M/s. Alkem Laboratories Ltd. Vs. Union of India [2021 (46) GSTL 113 (Guj.)]**, it was submitted that when adverse order was passed without giving opportunity of personal hearing, it was liable to be quashed.

In respect of the orders relating to three assessment years, the petitioner was not heard. While it is true that in reply in prescribed form given by the petitioner, in response to show-cause notice, the petitioner has indicated that he did not opt for personal hearing. It was by a sheer mistake and petitioner is required to have right to personal hearing exercised, so that it can put its case properly in response to the show-cause notice.

Findings and Decision of the Court:

Only on the ground of non-compliance of principles of natural justice in form of not giving opportunity of personal hearing, the three impugned orders dated 19.04.2022 issued by Department were set aside. The Department will give opportunity of personal hearing to the petitioner within three weeks from today and pass in accordance with law, fresh orders within two weeks from the date of affording such personal hearing.

Suresh Aggarwal, Advocate

Compliance & Litigation under GST

Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085

Phone: 91-9810032846; 011 - 45131427

Email: sureshagg@gmail.com

Website: <http://www.sureshtaxation.com>