The Joint Commissioner, Central Tax & Central Excise & Ors. v. Nishad K.U.

Whether the right to cross-examine witnesses whose statements are recorded and relied upon by the proper officer is an integral part of the principles of natural justice mandatorily applicable in adjudication proceedings under Section 74(9) of the CGST Ac

Date of Order: July 17, 2025
Case Law No: GIB-KERHC-2025-55
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CASE DESCRIPTION / SUMMARY

Background

The Respondent-assessee was subjected to proceedings under Section 74(9) of the CGST Act. A tax and penalty of more than Rs. 9.40 Crores was imposed upon him. During the enquiry, the proper officer recorded statements of third parties and entirely based his opinion of guilt on those statements, which were subsequently relied upon while passing the impugned order. The assessee requested an opportunity to cross-examine those persons — a request that was denied. Despite the availability of an appellate remedy, the assessee filed a Writ Petition before the Single Judge of the Kerala High Court alleging a serious infraction of the principles of natural justice. The Single Judge allowed the Writ Petition and set aside the impugned order, relying on Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II [(2016) 15 SCC 785]. The Revenue preferred the present Writ Appeal challenging that judgment.

Relevant Facts

The Revenue contended that Section 74 of the CGST Act contains no express provision for cross-examination of witnesses, and therefore no such right can be insisted upon as a matter of law. The Revenue further argued that the Single Judge wrongly relied on Andaman Timber Industries, which was rendered without considering the binding three-Judge Bench decisions of the Supreme Court in Kanungo & Co. v. Collector of Customs [1983 (13) ELT 1486 (SC)] and Surjeet Singh Chhabra v. Union of India [1997 (89) ELT 646 (SC)]. The assessee countered that the principles of natural justice must be read into the statute regardless of express provision, and that denial of cross-examination — when statements of third parties formed the entire evidentiary foundation against him — rendered the proceedings void. The Division Bench also considered, suo motu, that certain

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persons were arrayed as co-noticees in the same proceedings and distinguished the right of cross-examination in respect of independent witnesses from co-noticees.

Court Observations (Verbatim)

"*The question of maintainability of the writ petition, despite the existence of an alternate remedy, is no longer res integra...when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*" — *However, since the challenge was on the ground of violation of natural justice, the writ petition was held to be perfectly maintainable.*

— Para 9 & 10 (relying on CIT v. Chhabil Dass Agarwal)

"*It is now settled law that in every quasi-judicial proceedings, the rule of natural justice has to be followed. The rule of natural justice is the tenet of every adjudication proceedings, a violation of which renders the proceedings void. When courts are called upon to decide the validity of quasi-judicial proceedings on the ground of violation of principles of natural justice, it cannot shut its eyes and adopt a pedantic approach and hold that unless the said principle is specifically extended under plenary legislation or the rules framed under it, the insistence of the principles is not mandatory.*"

— Para 15

"*The entire basis for the formation of an opinion of guilt against the petitioner was the statements of third parties recorded by the proper officer. If the writ petitioner was to prefer an effective representation against the proposals in the notice, he had to know the basis of the allegations against him and test the evidence used against him. It was therefore imperative for the proper officer to have granted the opportunity of cross-examination to the petitioner.*"

— Para 14

"*A breach of the principles of natural justice strikes at the fundamental core of procedural fairness, rendering the decision invalid unless exceptional circumstances justify such deviation...the denial of natural justice at the initial stage cannot be cured at the appellate stage...the principles of natural justice are the cornerstone of justice, ensuring that no person is condemned unheard.*"

— Para 16 (relying on Krishnadatt Awasthy v. State of M.P., 2025 SCC Online 179)

"*Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution...principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature.*"

— Para 22 (relying on Aureliano Fernandes v. State of Goa [(2024) 1 SCC 632], Para 35-36)

"*We hold that in appropriate cases, extending an opportunity of cross-examination in a proceedings under Section 74(9) of the CGST Act 2017 is an integral part of the principles of natural justice, a violation of which will render the proceedings void*."

— Para 25 (Court's final conclusion)

Important Limitation (Para 24): The right to cross-examine does NOT extend to co-noticees. The assessee can only request the proper officer to supply copies of replies submitted by co-noticees — not seek their cross-examination.

Final Verdict

Writ Appeal filed by Revenue dismissed. Single Judge's order setting aside the impugned GST order confirmed and upheld. Division Bench held that in proceedings under Section 74(9) of the CGST Act, the right to cross-examine independent witnesses whose statements form the basis of the impugned order is an integral part of the principles of natural justice — denial thereof renders the order void. No costs.

Cases Referred by Court

Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-IIRelied upon
(2016) 15 SCC 785 — Supreme Court — Single Judge's basis for allowing writ petition; upheld by Division Bench

Kanungo & Co. v. Collector of Customs, Calcutta and OthersDistinguished
1983 (13) ELT 1486 (SC) — Supreme Court — Rendered under Sea Customs Act, 1878 (repealed); held inapplicable; cannot have universal application

Surjeet Singh Chhabra v. Union of IndiaDistinguished
1997 (89) ELT 646 (SC) — Supreme Court — Relied upon by Revenue; not accepted by Division Bench

Commissioner of Income Tax & Ors. v. Chhabil Dass AgarwalRelied upon
(2014) 1 SCC 603 — Supreme Court — Four exceptional circumstances where writ lies despite alternate remedy, including violation of natural justice

Krishnadatt Awasthy v. State of M.P. and OthersRelied upon3-Judge Bench
2025 SCC Online 179 — Supreme Court — Breach of natural justice strikes at fundamental core of procedural fairness; denial at initial stage cannot be cured at appellate stage

Ayaaubkhan Noorkhan Pathan v. State of MaharashtraRelied upon

(2013) 4 SCC 465 — Supreme Court — Non-extension of cross-examination opportunity vitiates decision; part of principles of natural justice

Ajay Saraogi v. Union of IndiaRelied upon
2024 (136) GSTR 330 — Calcutta High Court (Division Bench) — Right of cross-examination imbued under Customs Act; principles of natural justice not excluded

Union of India & Another v. Tulsiram PatelRelied uponConstitution Bench
(1985) 3 SCC 398 — Supreme Court — Principles of natural justice cannot be altogether excluded even by plenary/subordinate legislation; if excluded, such rule is ultra vires

Kothari Filaments and Another v. Commissioner of Customs (Port) Kolkata and OthersRelied upon
(2009) 2 SCC 192 — Supreme Court — Customs Act does not specifically exclude natural justice; denial of cross-examination of relied-upon witnesses renders confiscation order invalid

Aureliano Fernandes v. State of Goa and OthersRelied upon
(2024) 1 SCC 632 — Supreme Court — Natural justice is not empty incantation; forms bedrock of Article 14; violation tantamounts to violation of Article 14; Audi Alteram Partem is a twin anchor of natural justice

Maneka Gandhi v. Union of IndiaRelied upon7-Judge Bench
(1978) 1 SCC 248 — Supreme Court — Referenced within Aureliano Fernandes; life and liberty cannot be restricted except by procedure that is just, fair and reasonable

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