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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S. MONDAY, THE 17TH DAY OF
FEBRUARY 2025 / 28TH MAGHA, 1946

WA NO. 303 OF 2025

AGAINST THE ORDER/JUDGMENT DATED 17.12.2024 IN WP(C) NO.26732 OF 2024
OF HIGH COURT OF KERALA APPELLANTS/RESPONDENTS 1 TO 4:

- 1 THE JOINT COMMISSIONER,
CENTRAL TAX AND CENTRAL EXCISE, CGST KOCHI,
COMMISSIONERATE, C.R. BUILDING, I.S. PRESS
ROAD, KOCHI, PIN - 682018
- 2 THE ADDITIONAL DIRECTOR,
DGGI, KOCHI ZONAL UNIT, CENTRAL EXCISE BHAVAN,
KATHRIKADAVU, KALOOR P.O., KOCHI, PIN - 682017
- 3 THE ADDITIONAL COMMISSIONER
OF CENTRAL TAX AND CENTRAL EXCISE, C.R.
BUILDING, I.S. PRESS ROAD, COCHIN, PIN -
682017
- 4 CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS,
REPRESENTED BY THE PRINCIPAL COMMISSIONER
(GST), GST POLICY WING, NORTH BLOCK, NEW
DELHI, PIN - 110001

BY ADV R.HARISHANKAR

WA NO. 303 OF 2025

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RESPONDENTS/PETITIONER & 5TH RESPONDENT:

- 1 NISHAD K.U.,
AGED 42 YEARS
PROP. M/S. WOODTUNES ENTERPRISES, KUPPIYAN
HOUSE, OKKAL P.O., CHELAMATTAM, PERUMBAVOOR,
ERNAKULAM, KERALA, PIN - 683550
- 2 UNION OF INDIA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
MINISTRY OF FINANCE(DEPARTMENT OF REVENUE),
NORTH BLOCK, NEW DELHI, PIN - 110001

OTHER PRESENT:

ADV JAIKUMAR SEETHARAMAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
17.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

2025:KER:13589

WA NO. 303 OF 2025

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"C.R"

JUDGMENT

Easwaran S., J.

To what extent does the Central Goods and Services Tax Act, 2017 permit reading in the principles of natural justice? The intra- court appeal preferred by respondents 1 to 4 in the writ petition challenging the judgment dated 17.12.2024 in WP(C)No.26732/2024 raises this seminal question of law.

2. The brief facts necessary for the disposal of the appeal are as follows:

The 1st respondent was visited with proceedings under Section 74(9) of the Central Goods and Services Tax Act, 2017 (in short, 'CGST Act'].

He was further visited with an order imposing a tax and penalty of more than Rs.9.40 Crores under the statutory provisions. Despite the availability of an alternate remedy, the 1st respondent herein approached the writ court alleging a serious infraction of the principles of natural justice, insofar as there was a failure to accede to his request for cross-examination of persons, whose statements were obtained during the

enquiry and which were relied upon by the authority while passing the order of penalty.

3. The appellants contended before the learned Single Judge that under the scheme of the CGST Act, there is no mandate for 2025:KER:13589 WA NO. 303 OF 2025 granting permission to cross-examine the witnesses whose statements were obtained by the proper officer in a proceedings for imposition of tax. However, the learned Single Judge, who considered the writ petition, took the view that the principles of natural justice had been violated since the authorities had denied the right to cross-examine the persons, who had given statements against the writ petitioner. While doing so, the learned Single Judge relied on the decision of the Hon'ble Supreme Court in *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II* [(2016) 15 SCC 785].

4. In the appeal before us, the appellants would contend that the learned Single Judge went wrong in placing reliance on the decision of the Supreme Court in *Andaman Timber Industries* (supra), especially since the decision referred to above did not take into consideration a binding Three Judge Bench decision of the Supreme Court in *Kanungo & Co. v. Collector of Customs, Calcutta and Others* [1983 (13) ELT 1486 (SC)] and in *Surjeet Singh Chhabra v. Union of India* [1997 (89) ELT 646 (SC)]. It is the specific case of the appellants that there is no requirement in law to grant an opportunity to cross-examine witnesses.

5. Heard Sri.R.Harishankar, the learned counsel appearing for the appellants, and Sri.S.Jaikumar, the learned counsel appearing 2025:KER:13589 WA NO. 303 OF 2025 for the 1st respondent/writ petitioner.

6. Sri.R.Harishankar, the learned counsel appearing for the appellants, vehemently pointed out that there is no requirement to follow the principles of natural justice in an adjudication proceedings, especially when the Act does not contemplate such an opportunity. The writ petitioner cannot insist, as a matter of right, that he should be granted an opportunity to cross-examine the witnesses, whose statements were obtained by the proper officer. He reiterated that although the learned Single Judge placed reliance on the decision of the Supreme Court in *Andaman Timber Industries* (supra), the Supreme Court had rendered the said judgment without referring to the binding three Judge Bench decision in *Kanungo & Co* (supra).

7. On the other hand, Sri.S.Jaikumar, the learned counsel appearing for the 1st respondent/writ petitioner, would contend that even if there is no provision under the CGST Act that permits the cross-examination of persons, whose statements were relied on by the proper officer, the principles of natural justice have to be read into the said provision. Infraction of the said principle would vitiate the proceedings and, therefore, the writ petitioner was perfectly justified in approaching the writ court.

8. We have considered the rival submissions raised across 2025:KER:13589 WA NO. 303 OF 2025 the bar.

9. The question of maintainability of the writ petition, despite the existence of an alternate remedy, is no longer res integra. The Supreme Court in *Commissioner of Income Tax & Ors v. Chhabil Dass Agarwal* [2014 (1) SCC 603], formulated four exceptional cases wherein a writ court can entertain a writ petition, despite the availability of an alternate remedy. Paragraph 15 of the said decision is extracted as under:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in *Thansingh Nathmal case*,²² *Titaghur Paper Mills case*³ and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained 2025:KER:13589 WA NO. 303 OF 2025 ignoring the statutory dispensation."

Thansingh Nathmal v. Supt. Of Taxes, AIR 1964 SC 1419 *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433

10. In the present case, the writ petition was preferred alleging that while passing the impugned order, Ext.P8, the proper officer did not grant an opportunity to the petitioner to cross-examine the witnesses, whose statements were relied on by him. Therefore, we find that the writ petition was perfectly maintainable despite the existence of an alternative remedy.

11. The appellants, however, maintain that it is not the requirement of law to provide an opportunity to cross-examine the witnesses, whose statements were recorded by the proper officer under Section 74 of the CGST Act. We thus are called upon to judge whether it is a requirement of law that in proceedings under Section 74 of the CGST Act, the proper officer has to grant an opportunity of cross-examination to the assessee, if requested.

12. Section 74 of the CGST Act prescribes the procedure for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. Once the proper officer forms an opinion that a notice has to be issued to the assessee, he must serve a notice under sub-Section (3) of Section 74 of the CGST 2025:KER:13589 WA NO. 303 OF 2025 Act containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised. Once the said notice is given, then, the proper officer is required under sub-Section (9) of Section 74 to consider the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order. There is no express provision for permitting a cross-examination of witnesses in the statute. It is therefore that the appellants

contend that so long as the Act does not envisage such an opportunity, the proper officer is not required to extend such a benefit to the assessee. In support of the aforesaid contention, the learned Counsel placed extensive reliance on the decision of the Supreme Court in *Kanungo & Co. v. Collector of Customs, Calcutta and Others* [1983 (13) ELT 1486 (SC)].

13. On a close reading of the aforesaid decision, we are of the considered view that the decision may not apply to the facts of the present case. A reading of the judgment shows that it was rendered in the context of provisions of the Sea Customs Act, 1878. When strong reliance is placed on the said decision, the appellants conveniently omitted to notice the fact that the Sea Customs Act, 1878 stood repealed on promulgation of Customs Act, 1962, where the provision governing procedure for adjudication is Section 122 which 2025:KER:13589 WA NO. 303 OF 2025 provides for an opportunity for hearing and therefore does not exclude the principles of natural justice. Therefore, we are of the view that the decision rendered by the Supreme Court in *Kanungo & Co* has to be understood as one rendered in the facts of that case and cannot have universal application in view of the subsequent enactment. Moreover, the extent of the application of principles of natural justice has to be construed in the context of a procedure prescribed under a particular enactment.

14. Turning to facts, it can be seen that the proper officer recorded the statements of the persons who had deposed against the assessee and their statements were relied on by the proper officer in arriving at a tentative finding against the petitioner. Thus, 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.

15. As regards the contention of the appellants that it is not the requirement of law to provide an opportunity to cross-examine the 2025:KER:13589 WA NO. 303 OF 2025 witnesses since it is not an integral part of the principles of natural justice, we cannot but disagree with the stand of the appellants. 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.

16. In *Krishnadatt Awasthy v. State of M.P. and Others* [2025 SCC Online 179], a three Judge Bench of the Supreme Court considered the question as to whether in the absence of any rule which mandates grant of an opportunity of hearing or extending the principles of natural justice, a violation of the latter would render the entire proceedings void? On an extensive analysis, the Court held that 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 Court went on to hold further that the denial of natural justice at the initial stage can

2025:KER:13589 WA NO. 303 OF 2025 not be cured at the appellate stage. On an extensive consideration of the various precedents, the Court also held that the principles of natural justice are the cornerstone of justice, ensuring that no person is condemned unheard.

17. In *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* [(2013) 4 SCC 465], the Supreme Court considered the question as to whether a request for cross-examination of the witnesses would form part of the principles of natural justice. The Court was considering the question in the context of verification of a caste certificate by the scrutiny committee constituted under the State law to go into the caste status of a particular employee. The Court held that non-extension of an opportunity to cross-examine the witnesses would vitiate the decision of the scrutiny committee, since the same was violative of the principles of natural justice.

18. A Division Bench of the Calcutta High Court in *Ajay Saraogi v. Union of India* [2024 (136) GSTR 330], while considering the question as to whether the right of cross-examination is imbibed under the provisions of the Customs Act, 1962 held that the Customs Act, 1962 does not prohibit the application of the principles of natural justice.

19. In *Union of India & Another v. Tulsiram Patel* [1985 (3) 2025:KER:13589 WA NO. 303 OF 2025 SCC 398] a Constitution Bench of the Supreme Court considered the scope of the principles of natural justice and held that a Rule framed under Article 309 cannot altogether exclude the principles of natural justice and if it does, then it is ultra vires.

20. We must note that the Supreme Court held as above despite the second proviso to Article 311(2) being deleted by the Constitution (Forty Second Amendment) Act, 1976. Thus, even if the plenary legislation or the subordinate legislation does not provide for the extension of the principles of natural justice, the same has to be read into the provisions.

21. In *Kothari Filaments and another Vs Commissioner of Customs (Port) Kolkata and others* [(2009) 2 SCC 192], the Supreme Court held that the provisions of the Customs Act, 1962 do not specifically exclude the principles of natural justice and the denial of opportunity to cross-examine the witnesses whose statements were relied on by the authorities while passing the order of confiscation, renders the proceedings invalid.

22. In *Aureliano Fernandes v. State of Goa and Others* [(2024) 1 SCC 632], the Supreme Court held that extension of the principles of natural justice is not an empty incantation. It forms the very bedrock of Article 14 and any violation of these principles tantamounts 2025:KER:13589 WA NO. 303 OF 2025 to violation of Article 14 of the Constitution. Paragraph Nos.35, 36, 37 and 38 are extracted hereunder:

"G. Article 14: Bedrock of the principles of natural justice

35. 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. Denial of the

principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

36. Article 14, often described as the "Constitutional Guardian" of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines "law" to include any ordinance, order, bye-law, rule, Regulation, notification, custom or usages having in the territory of India, the force of law. Thus, 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. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the 2025:KER:13589 WA NO. 303 OF 2025 process of expansive judicial interpretation. H. THE TWIN ANCHORS: NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM

37. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasi-judicial or administrative in nature, are Nemo Judex In Causa Sua, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and Audi Alteram Partem, i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

38. How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench decision in Maneka Gandhi v. Union of India (1978) 1 SCC

248. In this case, where a challenge was laid to the order of impounding the passport of the Appellant, which was silent on the reasons for such an action and the Respondent-State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable."

23. We must bear in mind that when judicial review of the order of a quasi-judicial authority is sought for, the court cannot turn a blind eye toward the civil consequences arising out of those orders impugned. Therefore, the assessee was fully justified in making a 2025:KER:13589 WA NO. 303 OF 2025 request for cross-examination of the witnesses whose statement formed the basis of the impugned order and non extension of such an opportunity erodes the efficacy of the order and thus renders it nugatory.

24. Having said so, we must hasten to add that the right to cross-examine does not extend in respect of all witnesses. During the consideration of the appeal, we found that while issuing notices and

passing final orders under Section 74 of the CGST Act, certain persons were arrayed as co-noticees. The plea of the writ petitioner to seek cross-examination of the co-noticees cannot be accepted as such. At best, the writ petitioner can only request the proper officer to serve copies of the replies submitted by the co-noticees to the notices received by them.

25. In conclusion, we find that the stand of the appellants that the principles of natural justice need not be followed during an adjudication under the provisions of the CGST Act is clearly untenable. In the light of the principles expounded by the Supreme Court in *Tulsiram Patel* (supra) and *Krishnadatt Awasthy* (supra), 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 2025:KER:13589 WA NO. 303 OF 2025 will render the proceedings void.

Therefore, we decline to interfere with the judgment of the learned Single Judge setting aside the impugned order and for the reasons stated therein as supplemented by the reasons in this judgment, we dismiss this writ appeal. No costs.

Sd/-

DR.A.K.JAYASANKARAN NAMBIAR, JUDGE Sd/-

EASWARAN S., JUDGE jg