

TAX INFO

Dated 01/12/2021

Latest update on GST Law: Information regarding GST Refund Cannot Be Rejected Without Giving a Proper Opportunity Of Being Heard as given in Judgement by High Court Of Jammu And Kashmir.

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

Name of Petitioner	Navneet R. Jhanwar
Name of Respondent	State Tax Officer
Court	High Court Of Jammu And Kashmir
Date of Judgement	17/03/2021
Appeal No.	Writ Petition No.WP(C) No.443/2021

Facts of the Case:

The Petitioner filed a refund claim in FORM-GST-RFD-06. A show cause notice was issued as to why his refund claim should not be rejected for the reason that the claim for refund is belated having been filed after the expiry of two years from the relevant date, as per explanation in Section 54(1) of the Act and that in the instant case the period had expired in April-2020. The petitioner replied to the show cause notice and explained the delay. He relied upon notification No.35/2020-Central Tax dated 03.04.2020 and Notification No.55/2020-Central Tax dated 27.06.2020 whereby due to outbreak of corona virus pandemic, time limit/due date for various compliances has been extended up to 31.08.2020. The explanation on **delay** by the petitioner was **accepted** and accordingly, the application of the petitioner for refund was processed. However, without serving further show cause notice the claim for refund was rejected vide order dated 02.12.2020 being not tenable in law.

Contention of Petitioner:

No opportunity of being heard was ever granted to the petitioner before passing the impugned order for rejection of refund. The show cause notice issued to the petitioner was only with respect to his claim being barred by limitation and the same was explained by the petitioner by filing written response. Section 54 of the Act and Rule 92 specifically provides that no order rejecting the claim of refund shall be passed unless the person claiming refund is given an opportunity of being heard.

Decision of the Court:

The petitioner who was entitled to hearing before passing of the rejection order has been denied such opportunity and therefore, the impugned order is fundamentally flawed and such order, which is passed in violation of the principles of natural justice and is violative of Article 14 of the Constitution of India is amenable to challenge by way of writ petition under Article 226 of the Constitution of India. No notice of show cause was given to the petitioner to explain as to why his claim for refund may not be rejected on merits. A unilateral decision was taken and the petitioner was conveyed the outcome of such decision i.e. rejection of the claim of the petitioner. The passing of order of rejection of the refund claim of the petitioner on merits, he was never put on notice nor was any opportunity of being heard ever afforded to him. The earlier show cause notice which was served upon the petitioner was as to why his claim should not be rejected having been filed beyond limitation.

The impugned order was quashed and the case was remanded back to the Department for passing order afresh after putting the petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard.

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>