

Court No. - 3

Case :- WRIT TAX No. - 222 of 2024

Petitioner :- M/S N A Enterprises Thru. Proprietor Mr. Naushad Ahmad

Respondent :- State Of U.P. Thru. Finance Secy. Ministry Of Finance
Lko. And 2 Others

Counsel for Petitioner :- Sandeep Gupta,Ravi Kumar Surtani

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Brij Raj Singh, J.

1. Heard learned counsel for the petitioner and the learned Standing Counsel, who appears for the State-opposite parties.

2. This writ petition has been filed with the following main prayers:-

"i. Issue a writ, order or direction in the nature of Certiorari quashing the order dated 15.03.2024 (Annexure No.1) passed by respondent no.3.

ii. Issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case."

3. It is the case of the petitioner he is a registered trader under the Uttar Pradesh Goods and Service Tax Act for waste and scrap of iron and steel. Opposite party no.3 issued a show cause notice under Section 74 of Central Goods and Service Tax Act, 2017 along with DRC-01 on 14.02.2024 and shown the date for submission of reply as 14.03.2024. Opposite party no.3 without giving any proper opportunity of hearing as per Section 75(5) of the Central Goods and Service Tax Act, 2017 has passed the impugned order on 15.03.2024 determining the tax amount of Rs.1,45,11,258/- for CGST and SGST along with penalty of the same amount and interest of Rs.98,67,656/-.

4. Learned counsel for the petitioner has submitted that the law has been settled by a Division Bench of this Court in *Writ Tax No.303 of 2024, Mahaveer*

Trading Company Vs. Deputy Commissioner, State Tax and another, decided on 04.03.2024, wherein the Court has observed that before any adverse order is passed in an adjudication proceedings, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority to proceed to deal with the case on merits ex-parte. It may also be that even after grant of such opportunity of personal hearing, the noticee fails to avail the same, leaving such situation apart, the opposite parties cannot deny opportunity of personal hearing to any person facing adjudication proceedings and pass adverse orders. Therefore, the Court has set aside the order challenged in the said writ petition passed under Section 74 of the Uttar Pradesh Goods and Service Tax Act, 2017.

5. Learned Standing Counsel has produced before this Court the instructions dated 06.09.2024 sent by the Deputy Commissioner, State Tax, Lucknow, wherein it has been stated that petitioner is a registered trader showing principal business as ferrous waste and scrap, remelting scrap ingots of iron or steel, waste, parings and scrap of plastics. The SIB conducted an inspection/enquiry and submitted a report on 25.08.2021, on the basis of such report, a notice was issued to the petitioner under Section 74 of the Central Goods and Service Tax Act, 2017 on 14.02.2024, wherein date, time and place of personal hearing was shown as 28.02.2024 at 11.44 AM in the office of opposite party no.1 at 5, Meera Bhai Marg, Lucknow and the date of submission of reply thereafter has been shown as 14.03.2024. The petitioner did not avail the opportunity and did not communicate any intention to file any reply or to appear in person nor did he file any application for adjournment of hearing. Therefore, the order dated

15.03.2024 has been rightly passed assuming that the petitioner has nothing to say in the matter. The petitioner has statutory remedy under Section 107 of the Act before the appellate authority.

6. Learned counsel for the petitioner has stated that petitioner was issued a show cause notice and the date was fixed for personal hearing, but on the very next day, the impugned order was passed.

7. We have found from the enclosures to the instructions sent by the Deputy Commissioner, State Tax, Lucknow that a show cause notice was issued on 14.02.2024 fixing the date for personal hearing on 28.02.2024 at 11.44 AM at 5. Meera Bhai Marg, Lucknow. The reply was to be submitted thereafter by the petitioner on 14.03.2024, but the petitioner neither availed the opportunity nor filed any application for giving a further date for hearing. The case of the petitioner is entirely different from the case of the petitioner in *Mahaveer Trading Company* (supra).

8. Learned counsel for the petitioner at this stage has pointed out that the petitioner has already filed appeal against the similar order. He has pointed out paragraph-6 of the writ petition.

9. We have gone through the paragraph-6 of the writ petition, which is quoted below:-

"6. That the penalty order has been passed in violation of the principles of natural justice because proper officer (Respondent No.3) passed an order and imposed penalty on similar grounds on which he had already passed for separate orders previously on dated 20.07.2022 for similar relevant parties based on monthly purchase made by the petitioner for which appeals under Section 107 of CGST Act of 2017 are still pending before the Hon'ble Court of Additional Commissioner Grade-II Appeal-4 State tax, Lucknow. because the legal provision as per Section 75(13) of the CGST Act of 2017 states that "where any penalty is imposed under Section 73 or Section 74 No Penalty for the same act or omission shall be imposed on the same person under any other provision of this act." (The photocopies of Appeal memo are annexed hereafter as Annexure No.3)."

10. It is evident from a perusal of paragraph-6 of the

petition that it relates to the separate months for which purchases have been shown and ITC credit claimed. The parties may be the same, the invoices/ITC may look to be the same as they have been issued by same traders, but for every return that is filed, a separate order can be passed for assessment/penalty.

The writ petition is *dismissed as misconceived*.

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(Brij Raj Singh, J.) (Sangeeta Chandra, J.)

Order Date :- 6.9.2024

Rao/-