

Chief Justice's Court

Case :- WRIT TAX No. - 1411 of 2025

Petitioner :- M/s J.V.D. Metals

Respondent :- State of Uttar Pradesh and another

Counsel for Petitioner :- Anil Prakash Mathur

Counsel for Respondent :- Ankur Agarwal, S.C.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition is directed against order dated 13.12.2024 passed by the Deputy Commissioner, Khatauli, Sector-1, Muzaffarnagar inter-alia raising a demand to the tune of Rs.11,74,37,329.16 under Section 74 of the Goods and Services Tax Act, 2017 ('the Act').

2. An inspection was carried out at the business premises of the petitioner on 28.08.2023. The respondent no. 2 issued a show cause notice dated 24.07.2024 to the petitioner under Section 74 of the Act *inter-alia* alleging that from the return filed by the petitioner on the web portal, e-way bill, data uploaded on the portal, data available in dealer monitoring and inward - outward supply were scrutinized, wherein prima-facie fact came to light that the petitioner's inward supply is from such firms, which have not made purchases as per GSTR-2A or the registration of the said firms were cancelled prior to the transaction. Exhaustive details in this regard were provided in the show cause notice. The petitioner was required to submit its reply to the show cause notice by 23.08.2024.

3. Despite service of notice, the reply was not filed. Whereafter, a reminder dated 14.10.2024 was issued requiring the petitioner to file reply by 30.11.2024. Despite receipt of the said reminder, as

well, no reply was filed, which led to passing of the order dated 13.12.2024, wherein on account of non filing of any response to the show cause notice, the respondent no. 2 analyzing the data, as indicated in the show cause notice and noticed hereinbefore, passed the order impugned.

4. Learned counsel for the petitioner made vehement submissions that action of the respondents in passing the order impugned is in gross violation of principle of natural justice inasmuch as the show cause notice and the reminder issued to the petitioner though fixed date of filing reply, the same in the column pertaining to date of personal hearing indicated 'N.A.' and therefore, as the order has been passed in violation of principle of natural justice, the order impugned deserves to be quashed and set aside.

5. Learned counsel appearing for respondents made vehement submissions that the order impugned is appealable under Section 107 of the Act and no reasons had been indicated in the petition seeking bypassing the said remedy except for alleging violation of principle of natural justice. It was emphasized that despite issuance of notice and reminder, the petitioner chose not to file any reply to the show cause notice and therefore, providing of opportunity of personal hearing, which could be only in support of reply to the show cause notice, the plea raised has no substance and therefore, the petition deserves dismissal.

6. Counsel for the petitioner made submissions that filing of a reply to the show cause notice is not necessary for the purpose of providing opportunity of hearing as it is always open for the petitioner to raise legal submissions during the course of personal hearing and it cannot be said that in all cases where a reply is not filed, opportunity of personal hearing can be denied to the

petitioner and therefore, the action deserves to be quashed and set aside.

7. We have considered the submissions made by counsel for the parties and perused the material available on record.

8. A bare look at the show cause notice and reminder issued by the respondent reveals that while date of filing reply has been indicated, in the column pertaining to personal hearing 'N.A.' has been indicated. As to what prompted the respondent in refusing opportunity of personal hearing in the first instance as well as in the reminder notice, cannot be deciphered. The plea raised that as the reply to the show cause notice has not been filed, there was no necessity to provide opportunity of personal hearing, cannot by itself cure the defect in issuing the show cause notice by beforehand denying opportunity of hearing, which action apparently is in violation of provisions of Section 75(4) of the Act.

9. Filing of reply in a given case may be necessary to defend the allegations made in the show cause notice and in absence whereof, by mere oral submission the same cannot be defended, however, the said aspect cannot be decided beforehand by the authority by denying opportunity of personal hearing by indicating 'N.A.' in the column pertaining to date of personal hearing.

10. In a given case, even without filing reply to the show cause notice, the assessee can defend the same by legal submissions, say for example by showing during the course of personal hearing that the notice is barred by limitation and/or the authority lacks jurisdiction and therefore, filing and non filing of reply by itself cannot justify denial opportunity of personal hearing, which is firmly entrenched in provision of Section 75(4) of the Act, which

requires opportunity of hearing to be granted where any adverse decision is contemplated against such person.

11. In view of the above fact situation, the petition filed by the petitioner is **allowed**. The order impugned dated 13.12.2024 passed by the respondent no. 2 is quashed and set aside.

12. The matter is remanded back to respondent no. 2, in case by 30.04.2025, any reply to the show cause notice is filed, the authority would take the same into consideration and after providing an opportunity of hearing to the petitioner, pass order in accordance with law.

Order Date :- 2.4.2025
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(Kshitij Shailendra, J) (Arun Bhansali, CJ)