

Court No. - 2

Case :- WRIT TAX No. - 4 of 2024

Petitioner :- M/S Primeone Work Force Pvt. Ltd. Thru. Its
Auth. Signatory Alok Kumar

Respondent :- Union Of India Thru. Secy. Ministry Of Finance
(Deptt. Of Revenue) New Delhi And Others

Counsel for Petitioner :- Neeraj Singh

Counsel for Respondent :- A.S.G.I.,Ashwani Kumar
Singh,C.S.C.,Dipak Seth

ALONG WITH:

(1) Case :- WRIT TAX No. - 5 of 2024

Petitioner :- M/S Primeone Work Force Pvt. Ltd. Lko. Thru.
Auth. Signatory Alok Kumar

Respondent :- Union Of India Thru. Secy. Ministry Of Finance
Deptt. Of Revenue , New Delhi And Others

Counsel for Petitioner :- Neeraj Singh

Counsel for Respondent :- A.S.G.I.,Ashwani Kumar
Singh,C.S.C.,Dipak Seth

(2) Case :- WRIT TAX No. - 6 of 2024

Petitioner :- M/S Primeone Work Force Pvt. Ltd. Lko. Thru.
Auth. Signatory Alok Kumar

Respondent :- Union Of India Thru. Secy. Ministry Of Finance
(Deptt. Of Revenue) , New Delhi And Others

Counsel for Petitioner :- Neeraj Singh

Counsel for Respondent :- A.S.G.I.,Ashwani Kumar
Singh,C.S.C.,Dipak Seth

(3) Case :- WRIT TAX No. - 7 of 2024

Petitioner :- M/S Primeone Work Force Pvt. Ltd. Lko. Thru.
Auth. Signatory Alok Kumar

Respondent :- Union Of India Thru. The Secy. Ministry Of
Finance Deptt. Of Revenue , New Delhi And Others

Counsel for Petitioner :- Neeraj Singh

Counsel for Respondent :- A.S.G.I.,Ashwani Kumar
Singh,C.S.C.,Dipak Seth

Hon'ble Vivek Chaudhary,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Sri Avinash Poddar assisted by Sri Neeraj Singh, learned counsel for petitioners, Sri Ashwani Kumar Singh, learned counsel for respondent no.1, learned Standing Counsel

for the State and Sri Dipak Seth, learned counsel for respondent nos.2 and 5 in all the petitions.

2. These are four writ petitions with regard to Financial Year 2020-21, 2022-23, 2021-22 and 2019-20 respectively. Petitioners have approached this Court challenging the orders dated 09.10.2023, 12.10.2023, 11.10.2023 and 12.10.2023 as well as show cause notices dated 14.9.2023, 14.9.2023, 14.9.2023 and 13.9.2023 issued by respondent no.4 in all four writ petitions respectively.

3. The said show cause notices were given asking the petitioners to show cause as to why tax and penalty be not imposed upon them. The date fixed in the show cause notice issued to the petitioners was 22.9.2023, 22.9.2023, 13.10.2023 and 13.10.2023 respectively in all four writ petitions. The petitioners had submitted their reply on 21.9.2023, 21.9.2023, 07.10.2023 and 07.10.2023 respectively. However, it appears that by mistake they marked as "NO" for opportunity of hearing. Learned counsel for petitioners submits that the same got marked due to some technical glitch/mistake on the portal.

4. Be that as it may, learned counsel for petitioners further submits that Section 75(4) of the U.P. GST Act, 2017 mandatorily requires an opportunity of hearing to be given to the petitioners. He further submits that the orders are passed a day prior to the date fixed for hearing. Thus, learned counsel for petitioners states that petitioners have not been given any opportunity of hearing and in fact, the authority did not even wait till the date, for which notice was given to the petitioners. Learned counsel for petitioners further relies upon a judgment dated 3.5.2023 passed by a Division Bench of this Court in ***Writ Tax No.551 of 2023 "M/s. Mohini Traders vs. State of U.P. and another"***, which again relies upon a judgment of this Court in ***Bharat Mint & Allied Chemicals Vs. Commissioner, Commercial Tax & others (2022) 48 VLJ 325***.

5. Section 75(4) of the U.P. GST Act, 2017 reads as under:

"An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

6. Section 75(4) of the Act of 2017 specifically states 'or where any adverse decision is contemplated against such person'.

7. Since in the present cases, both tax and penalty are imposed against the petitioners and admittedly, an adverse decision is

contemplated against the petitioners, therefore, under Section 75(4) of the Act of 2017, an opportunity of hearing was mandatorily required to be given by the department to the petitioners and merely marking the same as "NO" in the option cannot entitle the department to pass an order without giving any opportunity or even without waiting for the petitioners to appear on the date fixed. This Court has already taken a similar view in *M/s. Mohini Traders* (supra).

8. In view thereof, all the writ petitions are **allowed** on the sole ground of opportunity of hearing and the orders impugned in all four writ petitions are quashed.

9. It shall be open for the department to give a fresh opportunity of hearing to the petitioners on the reply already submitted by the petitioners to the show cause notice and pass a fresh order in accordance with law. The petitioners shall fully cooperate in expeditious disposal of the case.

10. All other questions raised in the writ petitions are left open to be decided at the appropriate stage.

[Om Prakash Shukla,J.] [Vivek Chaudhary,J.]

Order Date :- 12.1.2024

Sachin

