

Court No. - 39

Case :- WRIT TAX No. - 360 of 2024

Petitioner :- M/S Virat Agencies

Respondent :- State Of U.P. Through The Principal Secretary,
Institutional Finance, Civil Secretariat And 2 Others

Counsel for Petitioner :- Aloke Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Surendra Singh-I,J.

1. Heard Shri Aloke Kumar, learned counsel for the petitioner and Shri Ankur Agarwal, learned counsel for the revenue.
2. Challenge has been raised to the order dated 23.12.2023 passed under Section 73(9) of the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as the 'State Act') by the Deputy Commissioner, State Tax, Sector-11, Varanasi for the Tax Period July, 2017 to March, 2018.
3. At the outset, two objections have been raised. First, referable to Section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 read with the provision of Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Central Act'), it has been vehemently urged that no order may have been passed under the provisions of the State Act.
4. Second, it has been asserted, even otherwise the impugned order is wholly unsustainable as the same has been passed in gross violation of Section 75(4) of the Central Act. Here, it has been pointed out, the notice preceding the impugned order is of date 29.9.2023. In that, except indicating the date for filing of reply as 30.10.2023, the abbreviation "NA" was mentioned against the

columns to disclose the date of personal hearing, time of personal hearing and venue of personal hearing. Thus, the petitioner was completely prevented from availing his remedy of pursuing his objection in accordance with law.

5. Third, objection has been raised that no order may have been passed during pendency of earlier writ petition being Writ Tax No. 1014 of 2023 filed by the petitioner pertaining to rectification of GSTR-I. Unless that dispute is settled, no adjudication may have followed. However, on query made, it has been clarified that there is no interim order operating in the earlier writ petition.

6. The facts stated by learned counsel for the petitioner insofar as they pertain to violation of principles of natural justice incorporated in Section 75(4) of the Central Act as are also incorporated under the State Act under a pari materia provision, are admitted to the revenue.

7. In **Writ-Tax No. 303 of 2024 (Mahaveer Trading Company Vs. Deputy Commissioner State Tax and another)**, **Neutral Citation No.-2024:AHC:38820-DB**, we considered the fact of violation of Section 75(4) of the State Act. Therein, it was observed as below :

"6. Section 75(4) of the Act reads as below :

"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."

7. Perusal of the impugned order reveals, the petitioner appeared before the competent authority on three dates. With respect to those dates, the impugned order reads as below:

(i) "जारी नोटिस के अनुपालन में दिनांक 23/9/2022 को श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न है"

(ii) "जारी नोटिस के अनुपालन में दिनांक 07/10/2022 को श्री पुनः श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न है"

(iii) "जारी नोटिस के अनुपालन में दिनांक 27/10/2022 को श्री पुनः श्री एफ०सी० चौहान (राजू चौहान) अधिवक्ता फर्म उपस्थित हुए। नोटिस का स्पष्टीकरण प्रस्तुत किया गया जो निम्न है"

8. Thus, it is established on record that on all three dates, the petitioner had been called to file its reply on the points specified in the respective show-cause notice issued. The petitioner submitted its reply on each occasion. Those replies have been extracted in the impugned order. After recording the reply submitted on 27.10.2022, the adjudicating authority has chosen to deal with the merits of the replies submitted and passed a merit order.

9. It transpires from the record, neither the adjudicating authority issued any further notice to the petitioner to show cause or to participate in the oral hearing, nor he granted any opportunity of personal hearing to the petitioner.

10. On query made, the learned Additional Chief Standing Counsel fairly submits, in light of similar occurrences, noticed in other litigation, he had apprised the Commissioner, Commercial Tax. In turn, the Commissioner, Commercial Tax, Uttar Pradesh, has issued Office Memo No. 1406 dated 12.11.2024. The same has been addressed to all Additional Commissioner to be communicated to all field formations for necessary compliance. A copy of the same has been made available to this Court. It reads as below:

"1. The column in which date of personal hearing has to be mentioned, only N.A. is mentioned without mentioning any date.

2. The column in which time of personal hearing has to be mentioned, only N.A. is mentioned without mentioning time of hearing.

3. In some cases, the date of personal hearing is prior to which reply to the Show Cause Notice has to be submitted this is non-est and this practice has to

be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

4. In some cases, the date of personal hearing is on the same date to which reply to the Show Cause Notice has to be submitted-this is non-est and this practice has to be discontinued. The date of reply to the Show Cause Notice has to be definitely prior to the date of personal hearing.

5. In all cases observed, the date of passing order either u/s 73(9)/74(9) etc. of the Act is not commensurate to the date of personal hearing. It is trite law that the date of the order has to be passed on the date of personal hearing. For eg.,the date of furnishing reply to SCN is 15.11.2023 and date of personal hearing is 17.11.2023, then the date of order has to be 17.11.2023"

11. In view of the facts noted above, before any adverse order passed in an adjudication proceeding, personal hearing must be offered to the noticee. If the noticee chooses to waive that right, occasion may arise with the adjudicating authority, (in those facts), to proceed to deal with the case on merits, ex-parte. Also, another situation may exist where even after grant of such opportunity of personal hearing, the noticee fails to avail the same. Leaving such situations apart, we cannot allow a practice to arise or exist where opportunity of personal hearing may be denied to a person facing adjudication proceedings.

12. Thus, the impugned order cannot be sustained in the eyes of law. It has been passed in gross violation of fundamental principles of natural justice. The self imposed bar of alternative remedy cannot be applied in such facts. If applied, it would be of no real use. In fact, it would be counter productive to the interest of justice. Here, it may be noted, the appeal authority does not have the authority to remand the proceedings."

8. For the same reason, the impugned order cannot be sustained. It is set set aside. The writ petition is **allowed**.

9. As to further objection of the petitioner that the impugned order may not have been passed under the State Act, it may remain to be

raised by the petitioner before the respondent-authority to be considered, strictly in accordance with law. Also, we may leave it open to the petitioner to raise objection on merits as it may be advised. Those objections if raised, may be dealt with on their own merits by a reasoned and speaking order.

Order Date :- 13.3.2024
SA

(Surendra Singh-I, J.) (S.D. Singh, J.)

