

**Court No. - 7**

**Case :-** WRIT TAX No. - 319 of 2024

**Petitioner :-** M/S Prakash Iron Store,Hardoi Thru. Proprietor

**Respondent :-** State Of U.P. Thru. Prin. Secy. (Deptt. Of State Tax )Lko.  
And 2 Others

**Counsel for Petitioner :-** Anurag Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Pankaj Bhatia,J.**

1. Heard Shri Pranjal Shukla, learned counsel for the petitioner and learned Standing Counsel.

2. By means of the present petition, the petitioner has challenged the order dated 24.04.2024 whereby the appeal preferred by the petitioner under Section 107 of GST Act was dismissed.

The petitioner has also challenged the order dated 01.02.2022 passed by respondent no.3 whereby a demand has been created under Section of 74 of GST Act for F.Y. 2017-2018.

3. Submission of learned counsel for the petitioner is that the petitioner is a bonafide firm doing its business in accordance with law and had by mistake availed ITC but the same was not utilized. As the mistake was bonafide, the petitioner filed corrected return in the month of July, 2019. It is stated that despite the said, a notice was served under Section 74 of GST Act on 08.12.2021 wherein a proposed liability of Rs.2,98,333/- was sought to be levied and collected from the petitioner. The said show-cause notice also was based upon a survey conducted on 21.08.2019.

4. It is stated that after the issuance of show-cause notice, the petitioner filed his reply on 10.01.2022 and also prayed for grant of a personal hearing, however, an order came to be passed on 01.02.2022 without providing an opportunity of hearing in terms of the mandate of Section 75(4) of the GST Act. The petitioner preferred an appeal against the said order which was dismissed.

5. Contention of learned counsel for the petitioner is that the petitioner has challenged both the orders i.e. the order passed under Section 74 of GST Act as well as the order-in-appeal, however, he lays emphasis in challenging the original order whereby the demand under Section 74 of GST was confirmed, however, without providing for an opportunity of hearing.

6. From the records as produced by learned Standing Counsel, in the notice issued under Section 74 of GST Act, the date by which the reply was to be submitted was mentioned as 08.01.2022, however, date of personal hearing, time of personal hearing and venue of personal hearing were not indicated and simply the word "NA" was transcribed. Even in the reminder notice sent to the petitioner, in the column of date of personal hearing, time of personal hearing and venue of personal hearing, "NA" was transcribed.

7. Learned Standing Counsel, based upon instructions, states that no personal hearing was granted, which is also evident from the order impugned.

8. Section 75(4) of the GST Act mandates the granting of an opportunity of hearing where an adverse decision is contemplated against a person. This provision was also interpreted by this Court in the case of ***Party Time Hospitality Prop. Smt. Punita Gupta Lko. v. State Of U.P. & 2 Others (Writ Tax No.176 of 2023)*** decided on **28.08.2023** and the Court was of the view that compliance of Section 75(4) of GST Act is mandatory; while doing so, this Court had also considered the earlier judgments of this Court.

9. Considering the fact that the original order is contrary to the mandate of Section 75(4) of GST Act and is also violative of principles of natural justice, the order dated 01.02.2022 is liable to be quashed and is accordingly quashed.

10. As the impugned order has been quashed, order dated 24.04.2024 is also quashed.

11. Matter is remanded to respondent no.3 to pass fresh orders after giving an opportunity of hearing and after permitting the petitioner to file a reply to the show-cause notice, in accordance with law.

12. The petition is ***allowed*** in above terms.

**Order Date :- 6.12.2024**

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