

Chief Justice's Court

Case :- WRIT TAX No. - 2055 of 2025

Petitioner :- M/S Vibhuti Tyres

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ajay Kumar Kashyap, Ravindra Kumar Rastogi

Counsel for Respondent :- C.S.C. Ankur Agarwal (SC)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition is directed against the order dated 18.11.2023 passed by respondent no. 2 for the period July 2017 to March 2018, whereby a demand to the tune of Rs. 32,97,336/- has been raised against the petitioner.

2. The petitioner was issued a show-cause notice dated 29.09.2023 under Section 73 of Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') in GST DRC-01. The notice, inter alia, called upon the petitioner as to why tax, penalty and interest to the tune of Rs. 8,81,080/- be not imposed. Apparently, petitioner did not file any response to the said show-cause notice. As no appearance was made, the same led to passing of the order dated 18.11.2023 raising the demand as indicated herein-above.

3. Learned counsel for the petitioner made submissions that action of the respondents in raising demand to the tune of Rs. 32,97,336/- which includes penalty to the tune of Rs. 1,54,898/- and interest to the tune of Rs. 15,93,456/- is contrary to the show-cause notice issued to the petitioner and in violation of Section 75(7) of the Act inasmuch the same is beyond the show-cause notice wherein a demand to the tune of Rs. 8,81,080/- against tax, interest and penalty was sought to be recovered.

4. Learned Standing Counsel opposed the submissions made. Submissions were made that charging interest and penalty is statutory and, therefore, irrespective of the fact that the same has not been indicated in the show-cause notice, would not take away the power of the authority in demanding the interest and penalty in accordance with law and on that count, the petition deserves dismissal.

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

6. Provisions of Section 75(7), inter alia, read as under:

"(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

7. A perusal of the above would reveal that Section 75 deals with general provisions relating to determination of tax and sub-section (7) specifically stipulates that the amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

8. Admittedly, in the present case, the show-cause notice merely indicates the amount of Rs. 8,81,080/- as representing the tax, interest and penalty and the demand qua the three components has been raised at Rs. 32,97,336/-, which is ex facie contrary to the provisions of Section 75(7) of the Act.

9. In view of the above discussion, on account of violation of provisions of Section 75(7) of the Act, the order impugned cannot be sustained.

10. Consequently, the writ petition is allowed. Order dated 18.11.2023 (Annexure-5) is quashed and set aside and the matter is remanded back to the respondent no. 2 to provide an opportunity

to the petitioner to file response to the show-cause notice and after providing opportunity of hearing, pass a fresh order in accordance with law.

Order Date :- 7.5.2025

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(Kshitij Shailendra, J)

(Arun Bhansali, CJ)

