

Chief Justice's Court

Case :- WRIT TAX No. - 1407 of 2025

Petitioner :- M/s S R Construction

Respondent :- State of U.P. and another

Counsel for Petitioner :- Aditya Pandey

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

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition is directed against the order dated 20.04.2024 passed by respondent no. 2 for financial years 2018-19, whereby a demand to the tune of Rs. 59,27,500/- has been raised against the petitioner.

2. The petitioner was issued a show-cause notice dated 27.01.2024 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. 28,15,200/- be not imposed. Apparently, petitioner did not file any response to the said show-cause notice. A reminder dated 01.04.2024 was issued to the petitioner fixing 08.04.2024 as the date of hearing as well as date by which the reply could be filed. However, despite that, no appearance was made which led to passing of the order dated 20.04.2024 raising the demand as indicated hereinabove.

3. Learned counsel for the petitioner made submissions that action of the respondents in raising demand to the tune of Rs. 59,27,500/- which includes penalty to the tune of Rs. 2,81,520/- and interest to the tune of Rs. 28,30,780/- 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. 28,15,200/- against tax, interest and

penalty was sought to be recovered.

4. Further submissions have been made that while issuing the show-cause notice, petitioner was required to file reply by 27.02.2024 and date of personal hearing was also fixed on the same date, which is also in violation of principles of natural justice as the date of filing reply and the date of personal hearing cannot be the same as laid down by this Court in several judgments. It is prayed that the order impugned, being in violation of provisions of Section 75(7) of the Act and in violation of the principles of natural justice, be set aside and matter be remanded back to the authority to provide opportunity of hearing and pass appropriate order in accordance with law.

5. Learned Standing Counsel opposed the submissions made. Submissions have been made that the petitioner, despite issuance of notice and reminder, has chosen not to appear and file response and, therefore, passing of the order cannot be said to be in violation of principles of natural justice and, therefore, the petition deserves dismissal. 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 also, the petition deserves dismissal.

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

7. 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.”

8. 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.

9. Admittedly, in the present case, the show-cause notice merely indicates the amount of Rs. 28,15,200/- as representing the tax, interest and penalty and the demand qua the three components has been raised at Rs. 59,27,500/-, which is *ex facie* contrary to the provisions of Section 75(7) of the Act.

10. So far as the plea pertaining to not providing any opportunity of hearing is concerned, once it is the case of the petitioner that he was unaware of the issuance of the show-cause notice and the reminder, the fact that in the notices issued to the petitioner, the date of filing of reply and date of personal hearing were the same loses its significance and it cannot be said that on account of such indications, the notice, on its own, would stand vitiated.

11. 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.

12. Consequently, the writ petition is allowed. Order dated 20.04.2024 (Annexure-1) 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 :- 2.4.2025

P.Sri./Jyotasna

(Kshitij Shailendra, J) (Arun Bhansali, CJ)