

Court No. - 6

Case :- WRIT TAX No. - 414 of 2025

Petitioner :- M/S Amar Agencies Thru. Sole Proprietor, Mr. Chandra Prakash Gupta

Respondent :- State Of U.P. Thru. Prin. Secy. (State Tax) Lko. And 3 Others

Counsel for Petitioner :- Ashish Chaturvedi, Pratichi Chaturvedi

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. Present petition has been filed challenging the order dated 28.12.2023 passed against the petitioner under Section 73 of GST Act as well as the order dated 23.12.2024 passed by the appellate authority whereby the appeal of the petitioner was dismissed.

3. The facts, in brief, are that the petitioner was served with a show cause notice. In reply, the petitioner had sought for personal hearing, however, without granting the personal hearing, the order came to be passed under Section 73 of GST Act. Aggrieved against the said order, the petitioner preferred an appeal. The appellate order records that on three occasions, learned counsel for the appellant had appeared, however, thereafter, he did not appear despite several dates being fixed, as such, the appeal was decided holding that the appellant had failed to produce any evidence either before the adjudicating authority or before the appellate authority and also did not appear before the appellate authority, as such, the order dated 28.12.2023 required no interference.

4. In the light of the said argument, learned counsel for the petitioner argues that despite seeking an opportunity of hearing, the petitioner was not granted the hearing which is contrary to the mandate of Section 75(4) of GST Act. He also places reliance on the Division Bench judgment of this Court in the case of ***Merino Industries Ltd. v. State of Uttar Pradesh and Anr.***; **Neutral Citation No.- 2025:AHC:45204-DB**, specifically Paragraph 12, which reads as under:

"12. The present case provides a glaring example of such conduct on the part of the officers of the State wherein besides denying opportunity of personal hearing in the show cause notice by indicating 'NA' in the column pertaining to date of personal hearing, despite specific prayer made for providing opportunity of hearing in reply, the order impugned

has been passed without affording any opportunity of hearing."

5. With regard to the appellate order, contention of learned counsel for the petitioner is that even if the appellant had not appeared, it was incumbent upon the appellate authority to have decided the appeal on merits in terms of the mandate of Section 107(12) of the GST Act, which has not been done. Section 107(12) is quoted herein below:

"107. Appeals to Appellate Authority.

...

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision."

6. In terms of the mandate of Section 75(4) of GST Act, it is incumbent to grant an opportunity of hearing even if the same is not asked for, as such, the order under Section 73 of GST Act is in violation of principles of natural justice as well as against the mandate of Section 75(4) of GST Act. The appellate order, although, records the submission made in the memo of appeal, however, does not deal the same on merits and record that the appellant has failed to adduce any evidence. The said manner of adjudication cannot be termed as justified in view of the mandate of Section 107(12) of GST Act. Thus, finding the impugned orders dated 28.12.2023 & 23.12.2024 to be short of requirements of the mandatory provisions, the same cannot be sustained and are quashed.

7. Matter is remanded to the assessing authority to pass fresh order in accordance with law after affording an opportunity of hearing.

8. Present petition stands ***allowed*** in above terms.

Order Date :- 6.5.2025

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