

Chief Justice's Court

Case :- WRIT TAX No. - 1559 of 2025

Petitioner :- M/s Mayank Mineral

Respondent :- State of U.P. and another

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- S.C., Ankur Agarwal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition is directed against order dated 27.02.2025 passed by Assistant Commissioner, Jhansi under Section 73 of Uttar Pradesh Goods and Services Tax Act, 2017 (for short, 'the Act') *inter alia* raising demand pertaining to tax, interest and penalty to the tune of Rs. 52,48,621/-.

2. Petitioner was issued a show cause notice dated 29.11.2024 under Section 73 of the Act *inter alia* drawing attention of the petitioner towards the discrepancy between the declared data and the audit report on 13 points and the summary of show cause notice indicated a demand to the tune of Rs. 12,10,940.82/-.

3. The petitioner filed response to the said show cause notice, *inter alia* filing response to most of the issues as raised on merits and pointing out that as per Section 75(7) of the Act, the amount of tax, interest and penalty demanded in the order should not be in excess of the amount specified in the notice issued in Form DRC-01. Further plea was raised in respect of 2 issues wherein certain information was sought on which demand was likely to be created, that Section 73 of the Act does not deal with the submission or furnishing of documents by the tax payer to the officer and, therefore, on the said issues, it was required of the officer to drop

the proceedings.

4. The Assistant Commissioner, after providing opportunity of hearing and dealing with all the aspects sought to be raised, accepted the plea on merits on 11 points out of 13 wherein under few points, the petitioner deposited the tax due along with interest/agreed to deposit the same and on point nos. 4 & 10, raised a demand of Rs. 52,48,621/-.

5. Submissions have been made by learned counsel for the petitioner that action of the respondents in raising the demand to the tune of Rs. 52,48,621/- whereas the notice issued was only for a sum of Rs. 12,10,940.82/-, is *ex-facie* contrary to the provisions of Section 75(7) of the Act and on the said count, the order impugned deserves to be quashed and set aside.

6. Further submissions were made that while issuing notice under Section 73 of the Act, on point nos. 4 & 10, the petitioner was required to produce documents, which demand/requirement by the officer is *ex-facie* contrary to the provisions of Section 73 of the Act and, therefore, as no demand could have been raised on the said aspects, the order impugned deserves to be quashed and set aside.

7. Learned Standing Counsel vehemently opposed the submissions. It was submitted that the plea sought to be raised pertaining to restricted power under Section 73 of the Act and purported inability of the officer in seeking production of documents is totally baseless. It was emphasized that in case a clarification is required based on the material available with the authority, the documents can always be demanded and determination can be made on the said basis.

8. Further submissions have been made that as the amount

pertaining to point nos. 4 & 10 was yet to be determined, based on the documents to be produced, it cannot be said that in absence of quantifying the said amount in the show cause notice, the demand raised is in violation of provisions of Section 75(7) of the Act.

9. Further submissions were made that the Commissioner has passed a reasoned order in relation to point nos. 4 & 10 and in case the petitioner has any grievance qua the said determination, the remedy available is to file appeal under Section 107 of the Act and for not availing the said alternative remedy, no reason has been indicated in the writ petition and, therefore, the petition deserves dismissal.

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

11. A look at the notice issued under Section 73 of the Act would reveal that on point no. 4, the indications were made that as per the balance sheet, there were sundry creditors to the tune of Rs. 4,15,36,270/-, based on which the petitioner was required to produce the ledger account else, it was indicated that action in accordance with law would be taken.

12. Similarly, on point no. 10, based on the material available on portal, for Bill to Ship to transactions, the petitioner was required to produce details of invoices/Eway bills and further produce Eway bills in relation to tax invoices pertaining to the inward supply else, it was indicated that action accordance with law would be taken.

13. As noticed herein before, on the said aspects pertaining to point no. 4 and point no. 10, no response was given and objection was raised pertaining to the power to seek documents/information. The Assistant Commissioner by his determination made under Section

73(9) of the Act, dealt with the said aspects and raised demand.

14. Admittedly, despite specific demand raised pertaining to the documents/information as noticed herein before, nothing was produced and the same resulted in passing of the order impugned.

15. As the show cause notice was specific pertaining to the discrepancies noticed and had provided opportunity to produce documents, non quantification of the demand in the show cause notice and ultimately raising the demand while passing the order, cannot be said to be in violation of provisions of Section 75(7) of the Act inasmuch as once the discrepancy pertaining to the amount was pointed out, subject to production of documents, the determination made would always be treated as forming part of the notice.

16. The plea sought to be raised that under Section 73 of the Act, no documents can be determined, is ex-facie baseless. If the plea as sought is accepted, the indication made in point no. 4 pertaining to sundry creditors to the tune of Rs. 4,15,36,270/- without seeking further opportunities if the demand was raised, the same would have been in violation of principles of nature justice and the very fact that the petitioner choose not to supply the requisite material, essentially is an admission regarding the discrepancy as pointed out in the notice and, therefore, it cannot be said that either the documents cannot be demanded or on failure to produce documents, demand cannot be raised.

17. In view of above, both the pleas sought to be raised based on scope of Section 73 of the Act and violation of provisions of Section 75(7) of the Act, cannot be countenanced.

18. Learned counsel for the petitioner attempted to make submissions on the merit of the determination made on point no. 4

and 10 in the order impugned, for the said purpose the petitioner has to avail the remedy of appeal under Section 107 of the Act as pointed out by learned counsel for the respondent. Not a word has been indicated in the petition as to how the available remedy under Section 107 of the Act is not efficacious.

19. In view of above discussion, we do not find any reason to exercise our jurisdiction under Article 226 of the Constitution of India. The petition is, therefore, **dismissed** leaving it open for the petitioner to agitate the issue on merits before the appellate forum.

20. We make it clear that we have not examined the merits of the demand made and the submissions sought to be made by the petitioner on merits.

Order Date :- 7.5.2025

Sandeep

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