

Court No. - 3

Case :- WRIT TAX No. - 1258 of 2025

Petitioner :- M/S Pavan Traders

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

Hon'ble Praveen Kumar Giri,J.

1. This petition is directed against the order dated April 27, 2024 passed by respondent no. 2 for financial year 2018-19, whereby a demand to the tune of Rs.24,40,363.10 has been raised against the petitioner.

2. The petitioner was issued a show-cause notice dated January 30, 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.4,80,527/- be not imposed. Apparently, the petitioner did not file any response to the said show-cause notice. A reminder dated April 16, 2024 was issued to the petitioner fixing April 20, 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 April 27, 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.24,40,363.10, which includes tax and penalty to the tune of Rs.11,96,257.36 and Rs.1,19,625.72 respectively 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.4,80,527.36 against tax, interest and penalty was sought to be recovered.

4. It is prayed that the order impugned, being in violation of provisions of Section 75(7) of the Act, 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.4,80,527.36 as representing the tax, interest and penalty and the demand qua the three components has been raised at Rs.24,40,363.10, which is *ex facie* contrary to the provisions of Section 75(7) of the Act.

10. 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.

11. Consequently, the writ petition is allowed. Order dated April 27, 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 :- 3.7.2025
Rakesh

(Praveen Kumar Giri J.) (Shekhar B. Saraf, J.)