

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1512 of 2022

M/s Skyline Automation Industries

.....Petitioner

Through :- Mr. Ashish Agrawal and Mr. Shubham Agrawal,
Advocates

v/s

State of U.P. and another

.....Respondents

Through :- Mr. Ankur Agrawal, Standing Counsel for the
respondents

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE**

ORDER

1. Challenge in the present writ petition is to the order dated November 10, 2022 (DRC-07) Annexure-7 to the writ petition passed by respondent No.2 under Section 74(9) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the "Act").
2. The argument raised by the learned counsel for the petitioner is that in terms of the provisions of Rule 142(1A) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as "the Rules") as

existing at the time of initiation of the proceedings against the petitioner before it was amended on October 15, 2020, before passing any order under Section 74 of the Act, a show cause notice in Part A of FORM GST DRC-01A is required to be issued. It is only thereafter that the jurisdiction is vested with the Competent Authority to pass order. In the case in hand, notice in Part A of FORM GST DRC-01A having not been issued, any subsequent proceeding will be without jurisdiction as the petitioner did not have fair opportunity to respond.

3. In support of the argument, reliance was placed on a Division Bench judgment of Delhi High Court in **Gulati Enterprises v. Central Board of Indirect Taxes and Customs & others, 2022 U.P.T.C. (Vol. 111) - 1271**.

4. On the other hand, learned counsel for the respondents, while not disputing the fact that notice in Part A of FORM GST DRC-01A was not issued, submitted that subsequent reminders had given fair opportunity of hearing to the petitioner to place his case before the authority concerned, which he failed to avail of. The impugned order now passed is appealable under Section 107 of the Act.

5. After hearing learned counsel for the parties, in our opinion, present writ petition deserves to be allowed, as admittedly for initiation of proceedings against the petitioner a notice as provided for under Rule 142(1A) of the Rules in Part A of FORM GST DRC-01A was not issued, which provided for communication of details of any tax, interest and penalties as ascertained by the officer. Any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner. Similar view has been expressed by the Delhi High Court in **Gulati Enterprises' case (supra)** wherein also in identical facts pertaining to a case prior to the amendment of Rule 142(1A) of the Rules with effect from October 15, 2020, the impugned show cause notice was set aside and the matter was remitted back to authority concerned to initiate fresh proceedings in accordance with law. In the case in hand, the only difference being that subsequent thereto an order has also been passed on November 10, 2022, the same will not make any difference. As the initiation of proceedings itself are bad, the order passed consequent thereto will also fall.

6. For the reasons mentioned above, the writ petition is allowed. The impugned notice dated November 10, 2022 is quashed. However, with liberty to the respondents to initiate fresh proceedings against the petitioner in accordance with law.

(J.J. Munir)
Judge

(Rajesh Bindal)
Chief Justice

Allahabad
02.01.2023
Rakesh/Kuldeep

Whether the order is speaking : Yes

Whether the order is reportable : Yes/No