

Court No. - 4

Case :- WRIT TAX No. - 2070 of
2024

'AFR'

Petitioner :- M/S Akriti Food Industry Llp

Respondent :- State Of UP And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard Ms. Akarshi Agarwal, learned Advocate assisted by Sri Rahul Agarwal, learned counsel for the petitioner and learned Standing Counsel.
2. Invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution, petitioner, a Limited Liability Partnership concern engaged in the business of manufacturing and sale of goods claimed to be exempted from liability of tax/duty under the Goods and Services Tax Act, 2017 and hence seeks to challenge the order dated 7.11.2024 passed in appeal by Additional Commissioner Grade II, first appellate authority.
3. Submission advanced by learned counsel for the petitioner is that that order of assessing officer fastening the petitioner concerned with a liability of tax upon the sale for the relevant financial year in question alongwith interest and penalty in purported exercise of power under Section 73 of the GST Act, is absolutely *ex parte* one as neither alleged show cause notice was ever brought to the knowledge of the petitioner, nor service of the same was physically ever effected upon petitioner. Petitioner got knowledge of the proceedings conducted its back when the order came to be uploaded on the dash board with the tab "view additional notices and orders". Thus, it is argued that petitioner having failed to notice, the notice GST DRC- 01A, it could not make any reply at all.

4. It is also claimed that the order dated 11.12.2023 was also not communicated on e-mail to the petitioner. It is further pleaded that no sooner did petitioner come to know the order of assessing officer in September, 2024, petitioner immediately preferred statutory appeal before first appellate authority, however, same has been rejected on the ground of it being barred by time. Thus, two fold submissions have been advanced by the learned counsel for the petitioner:

i. In the absence of service of notice/ the show cause notice, petitioner was denied opportunity to put up its defence so as to justify no liability of tax *qua* business of manufacturing and sale under the GST; and

ii. Remedy of appeal having been denied on the ground of delay that was for want of knowledge, petitioner has been rendered remediless.

5. Learned counsel for the petitioner further submitted that controversy *qua* issue of show cause notice not being effected upon for it being not available upon tab 'view notices and orders' at the GST Portal and then rendering the party defenseless in the matter of liability of tax under the GST Act is no more *res integra*. It is submitted that division bench of this Court in the **Ola Fleet Technologies Pvt. Ltd. v. State of U.P. and Others** (Writ Tax No. 855 of 2024 decided on 22.07.2024) has dealt with this aspect of the matter and it has been held that no material existed to reject the contention advanced on behalf of the petitioner that order impugned imposing liability of tax was not reflecting under tab 'view notices and orders' and so there remained a valid dispute as to non consideration/consideration of the various documents of returns available which could have been shown in reply to the show cause notice.

6. The division bench was of the view that party under liability of tax in an *ex parte* order needs at-least an

opportunity to put up his defense by submitting papers which may have led assessing officer to uphold the claim for exemption from tax liability. The division bench accordingly, instead of keeping the matter pending disposed off the same with a direction that impugned order may be taken as notice to enable the petitioner to submit his reply and thereafter assessing officer may have to pass a fresh order.

7. This above division bench judgment in *Ola Fleet Technologies Pvt. Ltd (supra)* was followed by another division bench in the matter **Shyam Roshan Transport v. State of U.P. and 2 Others**, (Writ Tax No. 1756 of 2024) decided on 21.10.2024 and again division bench in the matter of **Atul Agrwal v. State of U.P. and 2 Others** (Writ Tax No. 1585 of 2024 decided 18.10.2024).

8. The view taken by the division benches as cited before the Court are absolutely correct on the principle that nobody should be condemned unheard and legislature while incorporating the provision of notice/ show cause notice, intended so.

9. The court is of the considered view that statutes provide procedure either in their substantive provisions, or under the rules framed thereunder, to ensure that orders are not passed by the authorities whimsically, more especially where the authorities exercise power which is *quasi judicial* in nature or akin to that. The legal position is well settled on the point that when a thing is required to be done in a particular manner then the same shall have to be done in that manner alone. In the case of **Sharif-Ud-Din v. Abdul Gani Lone (1980) 1 SCC 403**, it was held that "*whenever a statute prescribes that a particular act is to be done in particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.*"

10. Further, in the matter of **Krishna Rai (Dead) through Legal Representatives and Others v. Banaras Hindu University through Registrar and Others (2022) SCC 713**, wherein the Court referred to its earlier judgment in the matter of **Tata Chemicals Limited v. Commissioner of Customs (Preventive), Jamnagar (2015) 11 SCC 628**, and quotes: "*In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the year of the law at all.*"

11. It was further held in the *Tata Chemicals Limited (supra)* that any subjective satisfaction means it has to be exercised with restraints imposed by law and not arbitrarily.

12. Thus, in my considered view as and when mandatory requirement of law is not taken care of in the matter of compliance of procedure before taking decision by assessing authority or any competent authority for that matter, then it becomes inherent defect in the decision making process which cannot be cured at a later stage. If in a decision making procedure adopted by the authority is *de hors* the provisions of the act or rules framed thereunder, it is liable to be rendered as flawed one. A division bench in the case of **Skyline Automation Industries v. State of U.P. and Others, Writ Tax No. 1512 of 2022** decided on 02.01.2023 has dealt with this principle of law to hold that "*any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner.*"

13. In view of above, I do not find the orders impugned to be sustainable and equally I do not consider it necessary to invite response in a matter like this to keep this petition pending until its final decision which is bound to be the same as the Court proposes to do today.

14. Accordingly, I hereby direct that the order passed by the assessing officer dated 11.12.2023 shall be taken to be notice within the meaning of Section 73 of the GST Act, 2017 to enable the petitioner to file his objections and place his documents before assessing officer/competent authority for its consideration.

15. The petitioner shall be submitting his reply alongwith document within a period of eight weeks from today and thereafter assessing officer/competent authority shall be giving due consideration to the objections and documents filed and opportunity of hearing as well and thus shall be taking decision afresh within a further period of four weeks .

17. With these above observations and directions this petition stands disposed of.

Order Date :- 3.12.2024

Sanjeev