



2025:AHC:203992

Reserved on 10.11.2025
Delivered on 17.11.2025.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 1021 of 2025

M/S Vimlesh Kumar Contractor

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Petitioner(s)	: Aditya Pandey, Shailendra Kumar Tripathi
Counsel for Respondent(s)	: C.S.C., Sanjay Kumar Om

Court No. - 7

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner; Mr. Ravi Shanker Pandey, learned ACSC for the State-respondents and Mr. Sanjay Kumar Om, learned counsel for respondent no. 4.

2. By means of present petition, the petitioner is assailing the order dated 21.1.2025 passed by respondent no. 2 in the proceedings under Section 73 of the Act (F.Y. 2018-19) and the order dated 28.4.2024 passed by respondent no. 3.

3. Learned counsel for the petitioner submits that the petitioner is a proprietorship concern and is registered under the GST having GSTIN No. 09ADUPK0135F1ZJ and involved in work contract. He submits that on 31.1.2024 notice was issued under Section 73 of the Act for F.Y. 2018-19 alleging difference in the figures mentioned by the petitioner in GSTR -3B and details reflecting in Form 26AS of the petitioner. He submits that since the notice was uploaded in the tab 'additional notice and order' therefore, the petitioner was not able to know about the same, therefore, he could not file any reply of the said notice. However, without considering the material on record, an exparte impugned order dated 28.4.2024 has been passed by which tax, penalty and interest have been levied upon the petitioner. Aggrieved to the said order, the petitioner filed an appeal along with delay condonation application but without considering the grounds and materials, the appeal has also been dismissed by the order dated 21.1.2025.

4. Learned counsel for the petitioner further submits that the GST authorities have no jurisdiction for initiating the present proceeding as no services have been rendered under the GST regime. He further submits that the petitioner being the work contractor has executed the work of Jal Nigam, respondent no. 4 for the A.Y. 2015-16 and 2016-17 for which he has received the payment at a later stage. He further submits that Jal Nigam, respondent no. 4 has deducted the VAT @ 4 % and deposited the same while making the payment to the petitioner, and to the said effect, a certificate has already been issued but the same has been disbelieved without any cogent reason. He further submits that work has

been done by the petitioner prior to the implementation of GST regime, therefore, the GST authorities have no jurisdiction for imposing any tax, penalty or interest under the GST Act on the payment being received by the petitioner for the work done in the A.Y. 2015-16 and 2016-17, moreover, the said fact is also evident from the certificate issued by Jal Nigam, respondent no. 4. He further submits that without making any inquiry from respective department i.e. Jal Nigam, respondent no. 4, the present proceedings have been initiated, which is bad and liable to be set aside.

5. *Per contra*, learned ACSC supports the impugned order and submits that the petitioner has not discharged its liability of tax, therefore, the present proceeding has rightly been initiated. He further submits that there is clear cut mismatch of the return filed by the petitioner in GSTR 3 B and the details reflected in Form 26 AS of the petitioner provided by the Income Tax department. He further submits that it was the duty of the petitioner to produce evidence in support of its claim that the amount reflected in Form 26 AS is of the VAT period and no supply has been made under the GST regime. He submits that merely on the basis of certificate provided by the Jal Nigam, respondent no. 4, no benefit can be given to the petitioner.

6. Mr. Sanjay Kumar Om, learned counsel for respondent no. 4 submits that the petitioner was allotted work contract for which the payments have been made and same pertains to the A.Y. 2015-16 and 2016-17 as the same were received at a subsequent stage, therefore, it is clear that the payments were relating to the VAT period.

7. After hearing learned counsel for the parties, the Court has perused the records.

8. The present proceedings have only been initiated against the petitioner on the basis of fact that details have been mismatched between GSTR 3 B and Form 26 AS of the petitioner provided by the Income Tax Department. It is not in dispute that the petitioner is a work contractor and has awarded work contract for A.Y. 2015-16 and 2016-17. The original records have been summoned by this Court by the previous order and same were placed before the Court. On perusal of the original records, it shows that for the relevant A.Y. 2015-16 and 2016-17, the work order was allotted to the petitioner by UP Jal Nigam, respondent no. 4. Once the original record itself shows that petitioner was engaged in work contract and work order was allotted to the petitioner by Jal Nigam, merely on the basis of fact that payment has been made at a subsequent stage, after implementation of GST regime, the GST authorities cannot assume the jurisdiction to levy tax, interest or penalty on the ground of mismatch between GSTR 3 B and Form 26 AS of the petitioner issued by the Income Tax Department. It was the duty of the GST authorities to inform the assessing authority under the VAT Act and then the assessing authority of the petitioner should have looked into the matter but by no stretch of imagination, the present proceedings have been initiated under the GST regime and the proper officer assumes charge of levying GST, interest and penalty in respect of the work made prior to implementation of GST regime.

9. Further, learned ACSC also could not show any provision under the GST Act or Rules, which empowers for assuming

jurisdiction for levying tax, interest and penalty on the amount being received subsequently for no services being rendered under the GST regime but for the work made under the VAT regime.

10. This Court feels that the authorities have exceeded its jurisdiction for initiating the present proceeding under Section 73 of the Act.

11. In view of above, the impugned orders cannot be sustained in the eyes of law and same are hereby quashed.

12. The writ petition succeeds and is **allowed**.

13. Any amount deposited by the petitioner shall be refunded to him along with interest in accordance with law from the date of its deposit till the date of its actual payment within a period of one month from the date of production of certified copy of this order before the concerned authority.

(Piyush Agrawal,J.)

November 17, 2025

Rahul Dwivedi/-