

Chief Justice's Court

Case :- WRIT TAX No. - 2527 of 2025

Petitioner :- Bharat Mint & Allied Chemicals

Respondent :- State of U.P. and another

Counsel for Petitioner :- Abhinav Mehrotra, Bhavna Mehrotra, Satya Vrata Mehrotra

Counsel for Respondent :- C.S.C.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This writ petition has been filed by the petitioner aggrieved of the notice dated 25.02.2025 issued by respondent no. 2 under Section 74 of the Goods and Services Tax Act, 2017 (for short 'the Act') to the petitioner. The petitioner was earlier issued a notice under Section 73 of the Act, indicating as many as ten issues. The petitioner filed reply to the said show cause notice on all the aspects raised.
2. In the order passed under Section 73 (9) of the Act dated 20.02.2025, the authority in relation to the issues raised in Point Nos. 1, 6, 8 & 10 observed that as further investigation is required, a fresh notice would be issued and on rest of the aspects, the plea raised/response filed by the petitioner was accepted, whereafter the present notice under Section 74 of the Act has been issued.
3. Submissions have been made that the notice issued under Section 74 of the Act is without jurisdiction and deserves to be quashed and set aside, inasmuch as, none of the ingredients as required for issuance of notice under Section 74 of the Act are neither present nor have been alleged in the notice and, therefore, the notice is bad.
4. Reliance has been placed on an order passed by this Court in **M/s Vadilal Enterprises Ltd. Vs. State of U.P. And 2 others: Writ Tax No. 2486 of 2025**, decided on 23.05.2025.

5. Learned Standing Counsel contested the submissions made. It was indicated that it is not necessary to make allegations in the notice under Section 74 of the Act by using the language of Section 74 of the Act. The facts themselves speak for the ingredients and, therefore, the plea raised in this regard has no substance. However, it is not denied that the facts of order passed in the case of **M/s Vadilal Enterprises Ltd. (Supra)**, are similar to the present case.

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

7. The notice issued by the respondents under Section 74 of the Act reads as under:

“नोटिस जीएसटी अधिनियम-2017 की धारा-74 के अंतर्गत:-

फर्म को निम्नांकित बिन्दुओं पर पूर्व में जीएसटी अधिनियम -2017 की धारा-73 के अन्तर्गत नोटिस जारी की गई-

1- निम्नानुसार दाखिल GSTR-1 (4A, 4B, 4C, 6B, 6C, B2C +7-9B) में घोषित करावर्त एवं मासिक विवरणी 3B (3.1a) में घोषित करावर्त में अंतर स्पष्ट है। साक्ष्य सहित स्पष्टीकरण अपेक्षित है, अन्यथा क्यों न करावर्त में अंतर पर कर की माँग ब्याज/अर्थदण्ड सहित सृजित की जाये?

| Sr. | Issue | Taxable Value |
|-----|--|---------------|
| A | B2B Supply | 1808927201.20 |
| B | B2C Supply (if any) (GSTR1_7+GSTR1_5A_5B) | 0.00 |
| C | Advances Received (if any) (GSTR1_11A_1) | 0.00 |
| D | Sub Total (A)+(B)+(C) | 1808927201.20 |
| E | Credit/Debit Note (if any) (GSTR1_9B) | 2521305.23 |
| F | Advances adjustment if any (GSTR1_11B_1) | 0.00 |
| G | Subtotal (D)-[(E)+(F)] | 1806405895.97 |
| H | Outward taxable supplies (other than zero rated, nil rated and exempted) (GSTR3B_(3.1A)) | 1560634258.47 |
| I | Difference (G) - (H) | 245771637.50 |

2- निम्नानुसार GSTR-1 में घोषित करदेयता एवं मासिक विवरणियों में घोषित करदेयता में अंतर परिलक्षित है। साक्ष्य सहित स्पष्टीकरण अपेक्षित है अन्यथा क्यों न समायोजित न की गयी करदेयता की माँग ब्याज/अर्थदण्ड सहित सृजित की जाये?

| Sr | Issue | SGST | CGST | IGST | CESS | TOTAL |
|----|--|---------------------|---------------------|-----------------|------|------------------|
| A | B2B Tax | 7322442 4.03 | 7322442 4.03 | 4191546 0.40 | 0.00 | 188364308 .46 |
| B | B2C Tax (if any) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| C | Advances Received (if any) | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| D | Subtotal (A) + (B) + (C) | 7322442 4.03 | 7322442 4.03 | 4191546 0.40 | 0.00 | 188364308 .46 |
| E | Credit/Debit Note (if any) | 178278.3 1 | 178278.3 1 | 0.00 | 0.00 | 356556.62 |
| F | Advance adjustment if any | 0.00 | 0.00 | 0.00 | 0.00 | 0.00 |
| G | Subtotal (D)-[E] + (F)] | 7304614 5.72 | 7304614 5.72 | 4191546 0.40 | 0.00 | 188007751 .84 |
| H | Outward taxable supplies (other than zero rated, nil rated and exempted) | 7984840 5.83 | 7984840 5.83 | 2238381 4.00 | 0.00 | 182080625 .66 |
| I | Difference (G) - (H) | - 6802260. 11 | - 6802260. 11 | 1953164 6.40 | 0.00 | 5927126.1 8 |

3- ई-वे बिल में कुल कर और जीएसटीआर-3 बी में कुल कर के बीच स्पष्ट अन्तर है। स्पष्टीकरण अपेक्षित है।

| S.No. | Issue | Taxable Value |
|-------|------------------------------|---------------|
| A | EWB Total Tax (in lakhs) | 2043.49 |
| B | GSTR-3B Total Tax (in lakhs) | 1939.25 |
| C | Difference (A-B) (in lakhs) | 104.24 |

4- फर्म द्वारा Audited Balance Sheet में कुल बिक्री धनराशि रु० 1965655250.00 घोषित है। फर्म द्वारा आउटवर्ड ई -वे बिल रु० 1976432550.00 के जारी किए गये हैं। जबकि जीएसटीआर-3 बी में कुल सप्लाई रु० 1560634258.00 की घोषित है। अन्तर के संबंध में स्पष्टीकरण अपेक्षित है।

5- फर्म की विभागीय ऑडिट रिपोर्ट अनुसार आईजीएसटी की मद में रु० 14714721.00 कम जमा कर ब्याज सहित जमा किया जाना अपेक्षित है।

फर्म द्वारा उक्त बिन्दुओं पर प्रस्तुत स्पष्टीकरण सत्यापित नहीं है। इन बिन्दुओं से फर्म के करापवंचित आवर्त एवं कर अपवंचन स्पष्ट होता है। अतः फर्म को धारा-74 की नोटिस इस आशय से जारी की जा रही है कि

इन बिन्दुओं पर पुनः साक्ष्य सहित फर्म का पक्ष प्रस्तुत करें। फर्म की विभागीय ऑडिट की रिपोर्ट फर्म द्वारा प्रस्तुत स्पष्टीकरण से भिन्न है। अतः फर्म से अपेक्षित है कि उक्त बिन्दुओं पर साक्ष्य सहित पक्ष प्रस्तुत करें।

उक्त बिन्दुओं से सृजित मांग देयकर की गणना, ब्याज, आरआईटीसी एवं अर्थदण्ड की गणना का चार्ट निम्न प्रकार है-

| | Tax rate % | Turn over | Tax period | | Act | POS (Place of Supply | Tax | Interest | penalty | Others/ RITC | TOTAL |
|-------|------------|-----------|------------|--------|------|----------------------|----------|----------|----------|--------------|-----------|
| | | | From | To | | | | | | | |
| 1 | | | Apr-20 | Mar-21 | SGST | NA | 12014260 | 9527144 | 12014260 | 0 | 33555664 |
| 2 | | | Apr-20 | Mar-21 | CGST | NA | 12014260 | 9527144 | 12014260 | 0 | 33555664 |
| 3 | | | Apr-20 | Mar-21 | IGST | UP | 34246367 | 27156900 | 34246367 | 0 | 95649634 |
| TOTAL | | | | | | | 58274887 | 46211187 | 58274887 | 0 | 162760961 |

अतः आप दिनांक 25-03-2025 तक उक्त के संदर्भ में अपना लिखित जवाब एवं पर्याप्त साक्ष्य ऑनलाइन/ऑफलाइन उपलब्ध कराते हुए अधोहस्ताक्षरी के कार्यालय में उपस्थित होकर बतायें कि क्यों न उपर्युक्त रूप में वर्णित नोटिस के अनुसार कर , आईटीसी रिवर्स एवं ब्याज की कार्यवाही करते हुए 100 प्रतिशत के बराबर अर्थदण्ड आरोपण कर दिया जाये।

(राम कुमार)

संयुक्त आयुक्त (कारपोरेट सर्किल)
राज्य कर, बरेली।”

8. This Court in the case of **M/s Vadilal Enterprises Ltd. (Supra)** wherein the same officer in identical circumstances had adopted the similar method i.e. while deciding the notice under Section 73 of the Act, finding paucity of time, left the issues undecided and issued notice under Section 74 of the Act, came to the following conclusion:

"8. A bare perusal of the language indicated therein clearly reflects that a reference to notice issued under Section 73 has been made and that the explanation filed, could not be verified and, therefore, further explanation was expected. The very fact that the respondents have sought further explanation and not a word has been indicated that the petitioner, inter alia has committed fraud,

has given wilful misstatement or has suppressed material facts, which are the ingredients based on which provisions of Section 74 of the Act can be invoked necessarily shows lack of requisite ingredients in the notice.

9. In view of the above fact situation, the jurisdictional aspect for invoking provisions of Section 74 of the Act insofar as the present notice is convened, being not present, the same cannot be sustained.

10. Consequently, the petition is allowed.

11. Notice issued under Section 74 of the Act is quashed and set aside. However, the respondents would be free to take appropriate/fresh proceedings in accordance with law. "

9. The present case is squarely covered by order in the case of **M/s Vadilal Enterprises Ltd. (Supra)**.

10. Consequently, the writ petition is **allowed**. The notice issued under Section 74 of the Act is quashed and set aside. However, the respondent would be free to take appropriate/fresh proceedings in accordance with law.

Order Date :- 30.5.2025

Sandeep/Pkb

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