

Chief Justice's Court

Case :- WRIT TAX No. - 2486 of 2025

Petitioner :- M/S Vadilal Enterprises Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- C.S.C., Ankur Agarwal (SC)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This writ petition is directed against notice dated 25.02.2025 issued under Section 74 of the Goods and Services Tax Act, 2017 (for short 'the Act') to the petitioner raising a demand of Rs.2601537910/-.
2. Challenge has been laid to the said notice *inter alia* on the ground that neither the ingredients as required under Section 74 of the Act are present nor have been alleged and, therefore, the notice is bad.
3. Submission have been made that on the issues for which a 74 notice has been issued, earlier a notice under Section 73 along with other aspects was issued to the petitioner to which response along with documents was filed. However, while passing the order on notice under Section 73 of the Act on 22.2.2025, it was observed that on account of the difference between the document produced during the departmental audit and during proceedings under Section 73, a detailed inquiry is required and for that a separate notice under Section 74 would be issued.
4. Whereafter the present notice has been issued wherein, no allegations, as required under Section 74 of the Act, have been made and, therefore, the notice is without jurisdiction and deserves to be quashed and set aside. Reliance has been placed on **Ajnara Realtech Limited vs. State of Uttar Pradesh : 2025 NTN (Vol. 87)-521** which judgement in turn has relied on **HCL Infotech Ltd. vs. Commissioner, Commercial Tax : 2024 86 NTN DX 751**.

5. Learned Standing Counsel made vehement submissions that the material, which is on record, clearly reflects that there has been suppression on part of the petitioner and, therefore, the notice impugned cannot be said to be bad. Further submissions have been made that even if the ingredients as indicated under Section 74 of the Act, are not indicated in the same language, the substance of the notice has to be examined and, therefore, the petition deserves dismissal.
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 पूर्व में धारा-73 की नोटिस के अन्तर्गत निम्नांकित बिन्दुओं पर स्पष्टीकरण प्रस्तुत करने की अपेक्षा की गई थी, किन्तु फर्म द्वारा प्रस्तुत स्पष्टीकरण सत्यापित नहीं पाया गया। अतः फर्म को पुनः निम्नांकित बिन्दुओं पुनः स्पष्टीकरण प्रस्तुत किया जाना अपेक्षित है-

- 1- विभागीय ऑडिट रिपोर्ट अनुसार फर्म द्वारा सन्झी क्रेडिटर्स की राशि रु0 5160099244.00 का कोई विवरण/साक्ष्य प्रस्तुत नहीं किया गया है। अतः इस बिन्दु पर अर्थदण्ड/ब्याज की कार्यवाही अपेक्षित है।
- 2- फर्म द्वारा निरस्त ई-वे बिल इनवर्ड/आउटवर्ड की जांच विभागीय ऑडिट परीक्षण में नहीं करायी गयी। अतः पुनः अवसर देते हुए फर्म को इसकी जांच हेतु विवरण प्रस्तुत करने का निर्देश किया जाता है।

फर्म द्वारा उक्त दोनों बिन्दुओं पर विभागीय ऑडिट के समय एवं न्याय-निर्णयन के समक्ष भिन्न-भिन्न आंकड़े प्रस्तुत किये गये हैं। फर्म द्वारा सन्झी क्रेडिटर्स के संबंध और निरस्त ई-वे बिल के संबंध में सत्यापित आंकड़े प्रस्तुत नहीं किये गये हैं। अतः फर्म को उक्त दोनों बिन्दुओं पर पुनः स्पष्टीकरण/ साक्ष्य प्रस्तुत करने के निर्देश दिये जाते हैं।

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	465598328	369213096	465598328	0	1300409752
2			Apr-20	Mar-21	CGST	NA	465598328	369213096	465598328	0	1300409752
3			Apr-20	Mar-21	IGST	UP	257218	203970	257218	0	718406
Total							931453874	738630162	931453874	0	2601537910

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।

Sd/-

25/2/2025

(राम कुमार)

संयुक्त आयुक्त (कारपोरेट सर्किल)

राज्य कर, बरेली।”

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.

Order Date :- 23.5.2025

RK/SL

(Kshitij Shailendra, J)

(Arun Bhansali, CJ)