Penalty Imposed in Excess of the Amount Proposed in the SCN is a Jurisdictional Error Under Section 75(7) of the GST Act

The Hon'ble Allahabad High Court in the case of ***M/s Jay Dee Enterprises v. Deputy Commissioner State Tax SGST & Anr. [Writ Tax No. 2908 of 2026 dated July 06, 2026]*** set aside the adjudication order passed under Section 73 of the Uttar Pradesh Goods and Services Tax Act, 2017 (**"the UPGST Act"**) imposing penalty of Rs. 9,21,084/- as against penalty of Rs. 4,60,542/- proposed in the Show Cause Notice, and held that there is a clear prohibition under the Act to confirm tax or penalty liability in excess of that proposed in the show cause notice, and any confirmation of demand in excess thereof constitutes a jurisdictional error in view of the mandatory provisions of Section 75(7) of the UPGST Act. Accordingly, the matter was remanded back to the Adjudicating Authority for passing a fresh order after affording due opportunity of personal hearing to the Assessee.

Facts:

- M/s Jay Dee Enterprises (**"the Petitioner"**) was issued a Show Cause Notice (**"the SCN"** under Section 73 of the UPGST Act for the tax period 2017-18, proposing a penalty of Rs. 4,60,542/- only.

- However, the Adjudicating Authority, *vide* order dated December 21, 2023 (**"the Impugned Order"**) passed under Section 73 of the UPGST Act, imposed a penalty of Rs. 9,21,084/- i.e., double the amount of penalty proposed in the SCN.

- Aggrieved by the Impugned Order, the Petitioner filed a writ petition before the Hon'ble Allahabad High Court, contending that the Impugned Order suffers from the defects of jurisdiction, having been passed in clear violation of the mandatory provisions of Section 75(7) of the UPGST Act, which prohibits confirmation of tax or penalty liability in excess of that proposed in the show cause notice.

- On being queried by the Hon'ble Court, the learned Standing Counsel appearing for the Revenue could not deny the said position, either in fact or in law.

Issue:

Whether the adjudication order imposing penalty in excess of the amount proposed in the Show Cause Notice is sustainable in law?

Held:

The Hon'ble Allahabad High Court in ***Writ Tax No. 2908 of 2026*** held as under:

- **Observed that**, the SCN proposed a penalty of Rs. 4,60,542/- only, whereas the Impugned Order imposed a penalty of Rs. 9,21,084/-, and therefore, the Impugned Order suffers from the defects of jurisdiction.
- **Noted that**, there is a clear prohibition under the Act to confirm tax or penalty liability in excess of that proposed in the show cause notice and to that extent, a clear jurisdictional error exists in the Impugned Order.
- **Held that**, the Impugned Order, having been passed in violation of the mandatory provisions of Section 75(7) of the UPGST Act, is liable to be set aside.
- **Directed that**, the matter is remitted back to the Adjudicating Authority to pass a fresh order after affording due opportunity of personal hearing to the Petitioner and dealing with the Petitioner's objections, if any, as expeditiously as possible, preferably within a period of three months.

Hence, the Impugned Order was set aside and the matter was remanded back to the Adjudicating Authority for fresh adjudication.

Our Comments:

Section 75(7) of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) [*pari materia* to Section 75(7) of the UPGST Act] provides as under:

"The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

A bare perusal of the above provision makes it evident that the statute incorporates twin safeguards for the taxpayer at the stage of adjudication: *firstly*, the amount of tax, interest and penalty confirmed in the order cannot exceed the amount specified in the show cause notice; and *secondly*, no demand can be confirmed on grounds other than those specified in the show cause notice. The show cause notice is the very foundation on which the adjudication proceedings rest, and the adjudicating authority cannot travel beyond it, either in quantum or on grounds. Any breach of this mandate is not a mere procedural irregularity but a jurisdictional defect going to the root of the matter, rendering the order amenable to challenge under Article 226 of the Constitution of India, notwithstanding the availability of an alternative remedy.

The present ruling is in line with the consistent view taken by the Courts. The Hon'ble Allahabad High Court in ***M/s Vibhuti Tyres v. State of U.P. and Another [Writ Tax No. 2055 of 2025 dated May 07, 2025]*** set aside a demand order raising a demand of Rs. 32,97,336/- against Rs. 8,81,080/- proposed in the SCN, holding the same to be in clear violation of Section 75(7) of the CGST Act. Similarly, in ***M/s Vrinda Automation v. State of Uttar Pradesh and Another [2025 (5) TMI 1435 – Allahabad High Court],*** the order demanding Rs. 1,34,94,294/- as against Rs. 66,13,874/- proposed in the SCN was quashed, observing that Section 75(7) safeguards the taxpayer from surprise demands.

Further, the Hon'ble Allahabad High Court in ***M/s Associated Switch Gears and Projects Ltd. v. State of U.P. and Others [Neutral Citation No. 2024:AHC:12780]*** elaborately held that a show cause notice is a vital checkpoint which delineates the boundaries within which any authority can operate, and the authorities cannot travel beyond the show cause notice to impose liability on the assessee. Reliance in this regard was placed on the judgments of the Hon'ble Supreme Court in ***Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd. [(2006) 7 SCC 592] and Commissioner of Central Excise v. Ballarpur Industries Ltd. [(2007) 8 SCC 89],*** wherein it was categorically held that the Department cannot travel beyond the show cause notice. The Hon'ble Supreme Court in ***Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P) Ltd. [(2007) 5 SCC 388]*** has also held that the show cause notice is the foundation on which the Department has to build up its case, and if the allegations are not specific and are vague, the proceedings pursuant thereto cannot be sustained.

It is also pertinent to note that the rigour of Section 75(7) applies equally to interest. The Hon'ble Allahabad High Court in ***M/s Sanjay Construction v. State of U.P. [Writ Tax No. 161 of 2026 dated February 17, 2026]*** quashed the show cause notice and the adjudication order where interest was not quantified in the notice, holding that the same contravenes Section 75(7) of the CGST Act and that Section 75(9) cannot cure such a defect at the notice stage.

In view of the settled legal position, taxpayers are well advised to carefully compare the demand confirmed in the adjudication order (FORM GST DRC-07) with the amount and grounds proposed in the show cause notice (FORM GST DRC-01). Any confirmation of demand in excess of, or on grounds beyond, the show cause notice is a jurisdictional error which vitiates the order and can be effectively challenged before the jurisdictional High Court.

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(Author can be reached at info@a2ztaxcorp.com)

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