

Neutral Citation No. - 2024:AHC:173796-DB

Chief Justice's Court

Case :- WRIT TAX No. - 1882 of 2024

Petitioner :- M/S Ashish Traders

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ajay Kumar Yadav, Ashish Bansal, Shalini Goel

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

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This petition is directed against order dated 23.08.2024 passed by the Deputy Commissioner, State Tax, Azamgarh under Section 73 of the Goods and Service Tax Act, 2017 whereby demand has been created against the petitioner.

2. Submission has been made that notices issued under Section 73 of the Act, were uploaded on 'Additional Notices and Orders' Tab of the G.S.T. Portal, which is evident from Annexure-4 and consequently, the petitioner being unaware of issuance of the notices as well as passing of the order, could neither appear before the authority nor question the validity of the impugned order within the period of limitation.

3. Submission has been made that this Court in **Ola Fleet Technologies Pvt. Ltd. v. State of U.P. & 2 others, Writ Tax No. 855 of 2024** decided on 22.7.2024 taking note of the said aspect of the matter wherein notices have not been uploaded on the 'Due Notices and Orders' and instead uploaded on 'Additional Notices and Orders', came to the conclusion that the petitioner is entitled to the benefit of doubt and consequently, the matter has been remanded back to the authority.

4. Learned counsel appearing for the Department based on the material available on record does not dispute the contentions raised pertaining to uploading of the notices and orders on the 'Additional Notices and Orders' Tab instead of 'Due Notices and Orders' Tab and

the fact that the issue as raised is covered by judgement in the case of **Ola Fleet Technologies Pvt. Ltd (Supra)**.

5. In the case of **Ola Fleet Technologies Pvt. Ltd (Supra)** a co-ordinate Bench of this Court inter alia observed and came to the following conclusion:-

“4. Ultimately, vide last order dated 05.04.2024 the dispute between the parties boiled down to the issue due communication of the impugned order dated 12.07.2023. The petitioner claims that the same was not uploaded in the manner required inasmuch as the impugned order does not show up on the assessee's portal under the tab "view notices and orders". Rather, it reflects under the other tab for "additional notice and orders".

*5. Thus, according to the learned counsel for the petitioner the petitioner could not seek appropriate remedy against that order, within limitation. Reliance is placed on an earlier order of the Court in **Writ Tax No.551 of 2023 (M/s Mohini Traders Vs. State of U.P. and Another)** decided on 03.05.2023 [Neutral Citation No.2023:AHC:115008-DB].*

6. On the other hand upon written instructions received learned Standing Counsel would contend that the assessing officer is not to blame for any error being cited by the assessee. Referring to the web portal available to the assessing officer, it had been indicated that there is no option/ choice available to the assessing officer to upload the order in the manner that it may reflect under any one of the particular tabs visible to the assessee. On query made, Shri Ankur Agarwal fairly states that if it all issue may have to be addressed by the GST Network a separate entity constituted to design maintain and run the web portal.

7. At present, it does appear that the petitioner is entitled to a benefit of doubt. No material exist to reject the contention being advanced that the impugned order was not reflecting under the tab "view notices and orders". On merits, as noted in the earlier orders an other dispute exists whether all replies and annexures to the replies as filed by the assessee were displayed to the assessing officer and whether those have been considered. We find, no useful purpose may be served for keeping this petition pending or calling for a counter affidavit or even relegating the petitioner to the available statutory remedy. The entire disputed amount is lying in deposit with the State Government. Therefore, there is no outstanding demand. Accordingly, the writ petition is disposed of, with a direction, the assessee may treat the impugned order as the final notice and submit his written reply

within a period of two weeks. Thereupon the assessing officer may issue a fresh notice to the petitioner in the manner prescribed with at least fifteen days clear notice. The petitioner undertakes to appear on the date fixed. Appropriate reasoned and speaking order may be passed within a further period of one month from the date of service of notice on the petitioner.”

6. In view of the submissions made and the judgement in the case of **Ola Fleet Technologies Pvt. Ltd (Supra)** the writ petition filed by the petitioner is allowed. The order impugned dated 23.08.2024 passed by the Deputy Commissioner, State Tax, Azamgarh (Annexure-1 to the writ petition) is quashed and set aside.

7. The Assessing Officer may issue a fresh at least 15 days clear notice to the petitioner in the manner prescribed in accordance with law and based on the said notice, further proceedings may take place.

Order Date :- 6.11.2024

P.Sri./Sharad

(Vikas Budhwar, J) (Arun Bhansali, CJ)