

Court No. - 1

Case :- WRIT TAX No. - 1435 of 2022

Petitioner :- M/S Yash Building Material

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

Counsel for Petitioner :- Pranjal Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Pranjal Shukla, learned counsel for the petitioner and Sri Ravi Shanker Pandey, learned Additional Chief Standing Counsel for the State.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner has challenged the order dated July 30, 2021 passed by respondent No.3/Assistant Commissioner, Sector-6, Muzaffarnagar and the order passed in appeal dated August 31, 2022 by respondent No.2/Additional Commissioner, Grade-2 (Appeal), Commercial Tax, Muzaffarnagar on the ground that no notice was issued to the petitioner under Section 74(1) of Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act").

3. From the record, it is clear that a notice was issued to the petitioner under Section 74(5) of the Act on June 4, 2021 wherein officer asserted that the tax is payable by the assessee. However, upon non-payment of the tax, Section 74(7) of the Act would come into play and the proper officer is required to give a notice under Section 74(1) of the Act. This procedure, that is to be followed, was not followed and no show cause notice was issued to the petitioner. Instead of the same, the impugned order dated July 30, 2021 was passed.

4. From the above factual matrix, it is clear that proper show cause notice was not issued to the petitioner, and therefore, all the orders impugned herein are without any basis of law. In my opinion, the impugned orders are required to be set aside.

5. Accordingly, impugned orders dated July 30, 2021 and August 31, 2022 are quashed and set aside.

6. The respondents are at liberty to proceed in the matter after issuing notice under Section 74(1) of the Act.

7. With the aforesaid observations, the writ petition is allowed.

Order Date :- 31.1.2024

Kuldeep

(Shekhar B. Saraf,J.)