2026:AHC:171807-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 3203 of 2026

M/S Wonder Enterprises

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Aditya Pandey
Counsel for Respondent(s)	:	C.S.C.

Court No. - 39

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

1. Since purely legal issue is involved, affidavits are dispensed and the matter is being decided at the fresh stage, with consent of the parties.

2. Having heard Shri Aditya Pandey, learned counsel for the petitioner, Shri Arimardan Mishra, learned Standing Counsel for the State, it is admitted that the show cause notice under section 74 of the U.P. GST Act, 2017 (hereinafter referred to as 'the Act') was first issued to the petitioner on 17.06.2021. The petitioner submitted reply thereto on 13.07.2021 and 18.07.2021. Yet, wholly ex-parte order came to be passed by the Adjudicating Officer on 30.01.2025. Plain reading of the said order reveals that no consideration may have been offered to the two replies furnished by the petitioner dated 13.07.2021 and 18.07.2021 in that order.

3. Thereafter, without issuance of any notice to the petitioner, further order came to be passed on 05.02.2025, referable to Section 161 of the Act, whereby, the Adjudicating Authority has first noticed that there was an error in the order dated 30.01.2025, inasmuch as no consideration had been offered to the two replies furnished by the petitioner dated 13.07.2021 and 18.07.2021, in that order. To that extent, there is no dispute between the parties.

4. However, the petitioner is aggrieved by the approach adopted by the Adjudicating Authority, thereafter, inasmuch as instead of recalling the order dated 30.01.2025 and fixing another date for hearing, the

Adjudicating Authority proceeded to offer ex-parte consideration to the reply furnished by the petitioner on 13.07.2021 and 18.07.2021. Thus, second ex-parte order dated 05.02.2025 has been passed.

5. The above facts being undisputed, the only issue that requires consideration is, if it ever became open to the Adjudicating Authority to pass the order dated 05.02.2025. In the first place, there is no jurisdiction or power of review, with the Adjudicating Authority. Second, Section 161 of the Act, reads as below:-

> *"**Section 161. Rectification of errors apparent on the face of record.-***
>
> *Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:*
>
> *Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:*
>
> *Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:*
>
> *Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification."*

6. Thus, the power to rectify an error apparent on the face of record has been bestowed by the legislature. It may be exercised either *suo moto* or

at the instance of the asseesse. Then, generally, limitation of six months has been granted. Yet, it may not apply, to cases that involve correction of a mere clerical or arithmetical error, arising from any accidental slip or omission. Third, it is noticeable that the legislature has contemplated that where the rectified order is not prejudicial to the assessee, it may be passed, without issuing any notice to the assessee.

7. In the present case, the Adjudicating Authority has exercised the power *suo moto*. That jurisdiction exists. Then there is no issue of limitation involved as the power (to rectify the order dated 30.01.2025), has been exercised within one week. Second, the Adjudicating Authority has himself treated the error of not considering the two replies furnished by the assessee dated 13.07.2021 and 18.07.2021 to be errors that may fall within the scope of its powers to rectify the order dated 30.01.2025, in terms of the provisions of section 161 of the Act. Therefore, there is no issue existing in the present case if the mistake was rectifiable under section 161 of the Act.

8. Even otherwise, in **Grindlays Bank Ltd. Vs. Central Govt. Industrial Tribunal, (1980) Supp SCC 420**, an inherent / implied power of review, was recognised, in a Court or Tribunal to set aside a palpably erroneous order passed under a misapprehension, to correct a procedural defect, or an inadvertent error, *ex debito justitiae*, to prevent abuse of its process. In that case, an award passed by the Tribunal was set aside on sufficient cause being shown, for non-appearance of a party. In that context, it was observed as below:-

> *"**13.** We are unable to appreciate the contention that merely because the ex parte award was based on the statement of the manager of the appellant, the order setting aside the ex parte award, in fact, amounts to review. The decision in Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] is distinguishable. It is an authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. Sub-sections (1) and (3) of Section 11 of the Act themselves make a distinction between procedure and powers of the Tribunal under the Act. While the procedure is left to be devised by the Tribunal to suit*

> *carrying out its functions under the Act, the powers of civil court conferred upon it are clearly defined. The question whether a party must be heard before it is proceeded against is one of procedure and not of power in the sense in which the words are used in Section 11. The answer to the question is, therefore, to be found in sub-section (1) of Section 11 and not in sub-section (3) of Section 11. Furthermore, different considerations arise on review. The expression "review" is used in the two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the court in Patel Narshi Thakershi case [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that no review lies on merits unless a statute specifically provides for it. <u>Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal</u>."*

(emphasis supplied)

9. Therefore, to the extent, the Adjudicating Authority admits that two replies were furnished by the assessee dated 13.07.2021 and 18.07.2021 and those had not been considered by it in the order dated 30.01.2025, the said order may have remained amenable to procedural review that inheres in the Adjudicating Authority, as denial of opportunity of hearing and not assigning reasons in the Adjudication Order vitiate/taint the proceedings, beyond cure.

10. As to the only objection being pressed by the revenue that the order dated 05.02.2025 is not prejudicial to the assessee, we are not in a position to accept that submission, solely because some part of the demand arising under the order dated 30.01.2025 had been reduced. Once the error noticed was of denial of consideration to the case set out by the petitioner in its two replies dated 13.07.2021 and 18.07.2021, it never become open to the Adjudicating Authority to offer merit review to that order. While offering procedural review- to offer rectification of the

mistake apparent on the face of the record, the Adjudicating Authority was aware that the order dated 30.01.2025 had not considered the replies furnished by the petitioner- to any extent.

11. Once that fundamental error had been noted and to the extent, it cannot be denied that the said error goes to the root of the matter, the only course open to the Adjudicating Authority was- to recall the order dated 30.01.2025 and pass a fresh order after issuing another notice to the petitioner- for personal hearing. To allow the Adjudicating Authority to pass another ex-parte order creating tax demand, would amount to conceding to the Adjudicating Authority a power to review its order, on merits or to pass an order prejudicial to the asseessee, without issuing notice under section 161 of the Act.

12. The objection of the State that the order dated 05.02.2025 is not prejudicial to the assessee, cannot be sustained as demand has been created and sustained contrary to the replies on record. That objection may be raised in cases where the Adjudicating Authority notices an error in computation only and rectifies and thereby reduces that demand, *suo moto*. There, no notice may be given by the Adjudicating Authority. However, where a *denovo* order has been passed occasioned by recall of earlier order that was admittedly passed on a complete non-consideration of the reply furnished by the assessee, the principle contained in the third proviso to section 161, will not apply.

13. Consequently, order date 05.02.2025 is set aside. Matter is remitted to the Adjudicating Authority to pass a fresh order after affording opportunity of hearing to the petitioner.

14. The writ petition is allowed. No order as to costs.

(Swarupama Chaturvedi,J.) **(Saumitra Dayal Singh,J.)**

August 13, 2026

Bhanu