2026:AHC:226636

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4352 of 2026

M/S Shri Ganpati Carring Corp

.....Petitioner(s)

Versus

State Of Uttar Pradesh and 2 others

.....Respondent(s)

Counsel for Petitioner(s) : Pranjal Shukla, Priyanshu Kesarwani
Counsel for Respondent(s) : C.S.C.

Court No. - 53

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Pranjal Shukla, learned counsel appears for the writ petitioner as well as Sri Shashi Kant Mishra, learned Standing Counsel who appears for the State/ Revenue.

2. A joint statement has been made by learned counsels for the parties that they do not propose to file any affidavit and the petition be decided on the basis of the documents available on record.

3. With the consent of the parties, the writ petition is being decided at the fresh stage.

4. The case of the petitioner is that it happens to be a partnership firm in the name and style of M/s Shri Ganpati Carrying Corporation, registered having its office at Saharanpur, possessing a Registration Certificate GSTIN No. 09 APCPM 1630 F1 Z8. The petitioner claims to have been engaged in providing Goods Transport Services, i.e., transport of goods by road. The petitioner further claims that it had been submitting the returns as required and so far as the issue in this regard is concerned, the same revolves around the Financial Year 2018-19, i.e., April, 2018 to March, 2019, for which the petitioner had submitted / filed returns in Form GSTR-1 and GSTR-3B as well as Annual Return in Form GSTR-9 and Reconciliation Statement in Form GSTR-9C. As per the petitioner, owing to certain discrepancies which had occurred, according to the respondents, on 15.07.2023 a notice under Section 61 came to be issued, to which the petitioner, as claimed by the respondents, did not tender

reply and no adjournment was also sought.Thereafter, on 23.12.2023 a Show Cause Notice came to be issued, being Form GST DRC-01 under Rule 100(2) and 142(1)(a) of the Act, whereby the date by which the reply was to be submitted was 23.01.2024, but in the column pertaining to date of personal hearing, time of personal hearing, venue where the personal hearing will be held, this much was recited - "N.A.".

5. The allegation of the petitioner is that without affording opportunity of hearing of personal hearing, an order came to be passed by the authority in original on 23.04.2024, by Assistant Commissioner, State Tax Jurisdiction, Saharanpur, Sector 10, Saharanpur (B) Saharanpur, Uttar Pradesh under Section 73 of the Goods Services and Service Tax of the Act.

6. Aggrieved against the same, post gaining knowledge, the writ petitioner preferred an appeal under Section 107 of the Act before the Appellate Authority i.e. second respondent, Additional Commissioner Grade -2 (Appeal) State Tax Saharanpur, which came to be rejected on 04.08.2025 by the Appellate Authority on the ground of delay of 70 days.

7. Questioning the order passed by the Original Authority and by the Appellate Authority the present writ petition has been preferred.

8. Learned counsel for the writ petitioner sought to argue that the orders impugned cannot be sustained even for a single moment.

9. Elaborating the said submission, it is contended that though as per the allegation set forth by the respondents, the writ petitioner did not tender his reply to the notice under Section 61, but the larger issue would be once a show cause notice came to be issued on 23.12.2023 requiring the writ petitioner to submit its reply/ objection by 23.01.2024 then it was incumbent upon the authority in original to have accorded opportunity of personal hearing while fixing date, time and venue in that regard which is completely lacking. Further submission is that even though the appeal came to be preferred with a delay of 70 days then too in a cyclostyle manner, it has been rejected on the ground that the delay beyond three months plus one month is not liable to be condoned particularly when the Appellate Authority does not possess the power to condone the appeal.

Submission is that once right from the very inception from the very foundation, the original order stands vitiated then the appellate order is to fall down. Thus, it is prayed that the orders impugned be set aside, matter be remitted back to the original authority to pass a fresh order.

10. Countering the submission so made by the learned counsel for the writ petitioner, learned Standing Counsel submits that what is relevant would be the conduct of the assessee, as firstly, it did not submit its reply to the notice under Section 61 and so much so he also did not submit his reply to the show cause notice issued on 23.12.2023 and further now it is not open for the petitioner to have an objection that he has not been heard. However he could not dispute the fact that no date, time and venue has been fixed for conduction of the personal hearing.

11. I have heard the submission so made across the Bar and perused the record carefully.

12. The bone of the contention between the rival parties, which boils down at this juncture before this Court is whether mere non-submission of reply to the show cause notice will denude the Assessee for grant of opportunity of hearing. As a matter of fact once a show cause notice is issued then it is for the Assessee either to reply or not and further even in fact in case no reply has been submitted and a column has been earmarked in the show cause notice fixing the date, time and the venue of hearing, then proprietary demanded that the authority in original ought to have fixed date time and venue of personal hearing so as to enable the Assessee to put forward his stand orally though as per the claim set up by the respondents, the reply was not submitted.

13. Since the very foundation itself is weak eliminating the substratum, thus the entire proceeding stands vitiated. Now a question arises as to what remedial procedure is to be adhered to.

14. In the opinion of the Court, once the writ petitioner is well aware about the allegations contained in the show cause notice and it has been served, as it has been filed along with the writ petition, thus now the proceedings are to be conducted from the stage post service of the notice while giving an opportunity to the writ petitioner to tender his reply to the

show cause notice.

15. This writ petition is being decided in the following terms:-

(a) The orders dated 23.04.2024 passed by the Assistant Commissioner, State Tax, Jurisdiction Saharanpur, Sector-10, Saharanpur, (B), Saharanpur, Uttar Pradesh under Section 73 of the Act, as well as the order dated 04.08.2025 passed by Assistant Commissioner, Grade-2 [Appeal-1], State Tax, Saharanpur, Appellate Authority are set aside.

(b) The matter stands remitted back to the Assistant Commissioner, State Tax, Jurisdiction Saharanpur, Sector-10, Saharanpur (B), Saharanpur.

(c) Since the show cause notice has been annexed along with the writ petition, thus it would be deemed that the petitioner has full knowledge about the same.

(d) The writ petitioner shall tender his reply to the show cause notice by 13th November, 2026.

(e) The Authority in original, Assistant Commissioner, State Tax, Jurisdiction Saharanpur, Sector-10, Saharanpur (B), Saharanpur shall proceed to accord opportunity of hearing to the petitioner in the fourth week, i.e., week commencing 23rd November, 2026, while fixing a particular date informing the writ petitioner at least five days prior to it by Registered Post, E-mail, Telephonically and WhatsApp on the number so registered with it.

(f) The Authority shall pass an order by 24th December, 2026.

16. In case adjournment is sought by the writ petitioner, then the same shall be granted on exceptional circumstances which are beyond the control and comprehension of the Assessee and the same should not be beyond three days at a stretch.

17. With this observation, writ petition stands **disposed of**.

18. Needless to point out that this Court has not adjudicated the matter on merits and any observations made hereinabove would not be a factor so as

to obsess or impress upon the authority in that regard.

(Vikas Budhwar,J.)

November 2, 2026
N.S.Rathour

Digitally signed by :-
NIPENDRA SINGH RATHOUR
High Court of Judicature at Allahabad