

WRIT TAX No. - 735 of 2023 at Allahabad : M/S S.A. Iron And Alloys Pvt. Ltd. Vs. State Of U.P. And 4 Others

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Alope Kumar, learned counsel for the petitioner and learned ACSC for the State - respondents.
2. The instant writ petition has been filed against the impugned order dated 10.06.2022 passed by the respondent no. 4 as well as the impugned order dated 24.02.2023 passed by the respondent no. 5.
3. Learned counsel for the petitioner submits that the petitioner is a private limited company having GSTIN number. The petitioner is engaged in the business of sponge iron and MS ingots. He further submits that on 01.12.2018, the business premises of the petitioner was surveyed, on the basis of which the alleged stock was noted without making actual weighment and only by eye measurement and without physical accounting of stock of goods, raw materials, finished goods available at the business premises, etc. Thereafter, vide order dated 20.06.2020, penalty under section 130(3) of the GST Act read with section 122 was imposed, against which the petitioner preferred an appeal, which was allowed and the demand of tax, penalty and fine was quashed by the first appellate authority vide order dated 30.01.2023.
4. Learned counsel for the petitioner further submits that after more than three years from the date of inspection, proceedings under section 74 of the GST Act were initiated against the petitioner by issuing a show cause notice dated 07.06.2022, to which the petitioner filed a detailed reply annexing therewith all relevant materials. Being unsatisfied with the reply, the respondent no. 4 vide impugned order dated 10.06.2022, imposed tax, penalty and interest. Against the said order, the petitioner preferred appeal, which has been partly allowed vide impugned order dated 24.02.2023, instead of allowing the appeal in toto.
5. Learned counsel for the petitioner further submits that none of the ingredients of section 74 GST Act is available against the petitioner for initiating the proceedings under section 74 of the GST Act. In support of his submissions, he has placed reliance on the judgement of this Court in M/s Diamond Steel Vs. State of U.P. & 3 Others [Writ Tax No. 4 of 2022, decided on 06.04.2023].
6. Per contra, learned ACSC supports the impugned orders and submits that at the time of survey, there was mis-match of the stock and the petitioner suppressed the fact with an intention to evade payment of tax and therefore, the proceedings have rightly been initiated against the petitioner. He further submits that had the survey not been conducted, true picture of suppression of fact could not be revealed.
7. After hearing learned counsel for the parties, the Court has perused the record.

8. The record shows that the business premises of the petitioner was surveyed on 01.12.2018. At the time of survey, 220 ton of sponge iron stock was alleged to be found in excess. Other materials were also found. Further, the suppressed production was alleged to be made on the basis of consumption of electricity and excess weightage was also found other than declared by the petitioner. The appeal of the petitioner has partly been allowed reducing the liability, instead of allowing the same in toto.

9. The record further shows that none of the authorities below has recorded finding against the petitioner that the petitioner has used ITC by reason of fraud, mis-statement or suppression of fact with an intention to evade payment of tax.

10. Section 74 of the GST Act provides for initiating the proceedings for the reason of fraud, mis-statement and suppression of fact with an intention to evade payment of tax. Such finding is absent in the present proceedings. This Court in M/s Diamond Steel (supra) has held as under:-

“15. For taking recourse to Section 74, it is essential that along with search and seizure report, certain specific averment is made with regard to the supply of goods and the non-payment of tax coupled with the fact that the same should be by reasons of fraud, willful misstatement or suppression of facts and an intent to evade the tax. The adjudicating authority clearly erred in assessing and quantifying the demand and levying the penalty by taking recourse to some guidelines issued by the Income Tax Authorities which is impermissible while determining the tax liability under Section 74. The order of the appellate authority is even further bad in law as it discloses no reason, whatsoever for assessing the tax and quantifying the liability. While on the one hand, the appellate authority disapproved the manner in which the adjudicating authority had assessed and quantified the demand of tax and penalty, in the same breath, he proceeds to quantify the tax and imposed penalty without disclosing any reasons whatsoever.

16. On the perusal of the adjudicating authority's order as well as the appellate order, the manner in which the demand has been raised and quantified is not in consonance with the mandate of Section 74 and thus on the ground alone, impugned appellate orders as well as the adjudicating authority's orders are liable to be quashed. ”

11. Therefore, in absence of any finding as contemplated in section 74 of the GST Act, the impugned appellate order not allowing the appeal in toto cannot be sustained in law.

12. Accordingly, the appellate order, which is against the petitioner, is modified to that extent.

13. The writ petition succeeds and is allowed accordingly.

14. The authority concerned is directed to refund any amount deposited by the petitioner along with interest @ 4 % per annum from the date of its deposit till the date of refund, within a period of two months from the date of production of a certified copy of this order.

(Piyush Agrawal,J.)

November 06, 2025

Amit Mishra