

Maharishi Solar Technology Pvt Ltd vs State Of U.P. And 3 Others on 1 April, 2025

Author: Piyush Agrawal

Bench: Piyush Agrawal

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:44717

Court No. - 10

Case :- WRIT TAX No. - 1068 of 2024

Petitioner :- Maharishi Solar Technology Pvt Ltd

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Akashi Agrawal, Sanjeev Kumar

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

Heard Ms. Akashi Agrawal, learned counsel for the petitioner and learned ACSC for the State - respondents.

The instant writ petition has been filed against the impugned order dated 07.06.2024 passed by the Additional Commissioner, Grade - 2 (Appeal) - 3, Noida as well as the impugned order dated 30.03.2022 passed by the Deputy Commissioner, State Tax, Noida.

Learned counsel for the petitioner submits that the petitioner was a Company registered under the Companies Act and is engaged in the business of dealing in solar photo voltaic cells and modules.

She further submits that an assessment order was passed on 18.09.2019 for the assessment year 2016-17 where the accumulated credit of Rs. 25,67,405/- was mentioned, which was later on rectified vide order dated 14.03.2022; wherein, the amount of Rs. 19,83,643/- was found eligible to be carried forward. She further submits that on 23.09.2016, the petitioner made an application for refund of the said amount showing closing balance under the VAT Act for the period 30.06.2017 to be 'Nil'. With effect from 01.07.2017, the VAT regime was replaced by GST regime. She further submits that the petitioner filled up TRAN - 1 form claiming an input tax credit of Rs. 25,67,405/-, which was made available to the petitioner under the VAT regime. The petitioner's credit available with the petitioner and in the meantime, amalgamation took place with M/s Maharshi Technologies Private Limited under the GST regime. The said amount of credit was never utilized by the petitioner or by the amalgamated Company, as the same remained in the electronic credit register of the petitioner and subsequently, with the amalgamated Company.

She further submits that on 07.03.2022, a show cause notice under section 74 of the GST Act was issued on the ground that the assessment order for the Assessment Year 2017-18 passed for the petitioner under the VAT regime indicated that there was no carry forward of ITC. Thereafter, the Deputy Commissioner, State Tax passed the impugned order dated 30.03.2022 under section 74 of the GST Act requiring the petitioner to deposit a sum of Rs. 25,67,405/- towards ITC, which was allegedly wrongly carried forward by it from the VAT regime.

She further submits that as the aforesaid order was uploaded under the tab 'Additional Notices & Orders' of the GST portal, instead of 'Notices & Orders' tab, the petitioner was not aware of the order dated 30.03.2022. When the petitioner came to know about the order, the petitioner preferred an appeal along with an application for condonation of delay, but the appellate authority, vide impugned order dated 07.06.2024, rejected the petitioner's appeal on the ground that he had no power to condone the delay under section 107 of the GST Act.

Learned counsel for the petitioner further submits that it cannot be said that the presumption of deemed service of the order dated 30.03.2022 is attracted in the instant case. She further submits that the order dated 30.03.2022 could not be said to have been served on the petitioner upon its uploading on the GST portal and the period of limitation, therefore, will not begin from 30.03.2022 itself or soon thereafter. In support of her submissions, she has placed reliance on the judgements of the Division Bench of this Court in *Ola Fleet Technologies Private Limited Vs. State of U.P. & 2 Others* [Writ Tax No. 855/2024, decided on 22.07.2024], *Atul Agrawal Vs. State of U.P. & 2 Others* [Writ Tax No. 1585 of 2024, decided on 18.10.2024] and *Shyam Roshan Transport Vs. State of U.P. & 2 Others* [Writ Tax No. 1756/2024, decided on 21.10.2024] as well as the judgement of the Delhi High Court in *Anhad Impex & Another Vs. Assistant Commissioner & Others* [Writ C No. 2356/2024, decided on 16.02.2024].

Per contra, learned ACSC supports the impugned orders.

After hearing learned counsel for the parties, the Court has perused the record.

It is not in dispute that the proceedings were initiated and the petitioner submitted its reply, but thereafter, the order dated 30.03.2022, was uploaded under the tab 'Additional Notices & Orders' of the GST portal, instead of 'Notices & Orders' tab. The issue in hand is no more res integra and the same has already been decided by the Division Bench of this Court.

In Ola Fleet Technologies Private Limited (supra), this Court held as under:-

"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. "

Further, in Atul Agrawal (supra), this Court held as under:-

"3. Sri Agarwal, learned counsel appearing on behalf of the petitioner submits that neither any e-mail was received with regard to show cause notice nor the show cause notice was uploaded on the proper GST portal, rather, it reflects under the other tab "additional notices and orders". The Division Bench of this Court in Ola Fleet Technologies Limited v. State of U.P. and 2 Others [Writ Tax No.855 of 2024 (Neutral Citation No. - 2024:AHC:116559-DB) decided on July 22, 2024] has held that such notice which is not on the GST portal, but is under the other tab "additional notices and orders" will not act as notice."

InShyam Roshan Transport (supra), this Court held as under:-

"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."

In the case of Anhad Impex (supra), the Court has held as under:-

"6. This issue is further highlighted by another judgment of the Madras High Court dated 31.07.2023 in W.P. No.22369/2023 and other connected petitions, wherein the Madras High Court has noticed as under:-

"3. The only ground on which the, the impugned orders are under challenge is that the notices, which preceded the impugned orders were hosted in the Dashboard of the petitioner meant for ?Additional Notices and Orders? whereas, the notices should have been hosted by the respondent in the Dash Board for ?View Notices and Orders?.

4. The learned counsel for the petitioner has drawn attention to the manual copy given by the respondent in the web portal, which reads as under:-

"How can I view or download the notices and demand orders issued by the GST tax authorities?

To view or download the notices and demand orders issues by the GST tax authorities, perform the following steps:

1. Access the www.gst.gov.in URL. The GST Home page is displayed.

2. Login to the GST Portal with valid credentials.

3. Click the Services > User Services > View Notices and Orders command.

5. It is submitted that had the notice been uploaded in the correct place, the petitioner would have seen it and replied to the same and participated in the proceedings. Since the Notices and the Orders were hosted in the Dashboard of the petitioner meant for "Additional Notices and Orders", the petitioner failed to notice and file a reply to the Show Cause Notice.

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9. The problem has arisen on account of the complex architecture of the web portal. It has been designed to facilitate easy access of informations. It has however resulted

in the petitioner failing to notice the notice that was issued to the petitioner prior to the impugned order on 20.03.2023. It went unnoticed by the petitioner, as a result of which, the impugned orders have been passed on 29.04.2023."

In view of the aforesaid facts & circumstances of the case as well as the law laid down by this Court in the cases cited above, the impugned order dated 07.06.2024 passed by the Additional Commissioner, Grade - 2 (Appeal) - 3, Noida as well as the impugned order dated 30.03.2022 passed by the Deputy Commissioner, State Tax, Noida are hereby quashed.

The writ petition is allowed.

The matter is remanded to the authority concerned to adjudicate the matter afresh. The petitioner may treat the impugned order dated 30.03.2022 as the final notice and submit its written reply within a period of two weeks from today. 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.

Order Date :- 1.4.2025 Amit Mishra