

# **M/S Saini Zarda Store vs State Of U.P. And 2 Others on 1 May, 2025**

**Author: Ajit Kumar**

**Bench: Ajit Kumar**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?A.F.R.

Neutral Citation No. - 2025:AHC:69513

Court No. - 4

Case :- WRIT TAX No. - 1828 of 2025

Petitioner :- M/S Saini Zarda Store

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

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Ajit Kumar,J.

1. Heard learned counsel for the petitioner and learned Standing Counsel.

2. Invoking extra ordinary jurisdiction of this Court under Article 226 of the Constitution, petitioner, a proprietorship concern engaged in the business of trading under the Goods and Services Tax Act, 2017 and hence seeks to challenge the order dated 22nd August, 2024 passed in appeal by Additional Commissioner Grade II, first appellate authority.

3. Submission advanced by learned counsel for the petitioner is that that order of assessing officer fastening the petitioner concerned with a liability of tax upon the sale for the relevant financial year in question alongwith interest and penalty in purported exercise of power under Section 74 of the GST Act, is absolutely ex parte one as neither alleged show cause notice was ever brought to the knowledge of the petitioner, nor service of the same was physically ever effected upon petitioner. Petitioner got knowledge of the proceedings conducted its back when the order came to be uploaded on the dash board with the tab "view additional notices and orders". Thus, it is argued that petitioner having failed to notice, the notice GST DRC- 01, it could not make any reply at all.

4. It is also claimed that the order dated 6th October, 2021 was also not communicated on e-mail to the petitioner. It is further pleaded that no sooner did petitioner come to know the order of assessing officer in March, 2024, petitioner immediately preferred statutory appeal before first appellate authority, however, same has been rejected on the ground of it being barred by time. Thus, two fold submissions have been advanced by the learned counsel for the petitioner:

i. In the absence of service of notice/ the show cause notice, petitioner was denied opportunity to put up its defence so as to justify no liability of tax qua business of trading and sale under the GST; and ii. Remedy of appeal having been denied on the ground of delay that was for want of knowledge, petitioner has been rendered remediless.

5. It is also argued by Sri Shubham Agrawal, learned counsel for the petitioner that no opportunity of hearing was afforded to the party which was passing the order by Assessing Authority and only application NA (not applicable) was recorded. It is submitted that non compliance of the show cause notice could have only led to the closure of opportunity to submit reply but yet the show cause notice was not there available but by way of additional notice.

6. Learned counsel for the petitioner further submitted that controversy qua issue of show cause notice not being effected upon for it being not available upon tab 'view notices and orders' at the GST Portal and then rendering the party defenseless in the matter of liability of tax under the GST Act is no more res integra. It is submitted that division bench of this Court in the *Ola Fleet Technologies Pvt. Ltd. v. State of U.P. and Others* (Writ Tax No. 855 of 2024 decided on 22.07.2024) has dealt with this aspect of the matter and it has been held that no material existed to reject the contention advanced on behalf of the petitioner that order impugned imposing liability of tax was not reflecting under tab 'view notices and orders' and so there remained a valid dispute as to non consideration/consideration of the various documents of returns available which could have been shown in reply to the show cause notice.

7. The division bench was of the view that party under liability of tax in an ex parte order needs at-least an opportunity to put up his defense by submitting papers which may have led assessing officer to uphold the claim for exemption from tax liability. The division bench accordingly, instead of keeping the matter pending disposed off the same with a direction that impugned order may be taken as notice to enable the petitioner to submit his reply and thereafter assessing officer may have to pass a fresh order.

8. This above division bench judgment in Ola Fleet Technologies Pvt. Ltd (supra) was followed by another division bench in the matter of Shyam Roshan Transport v. State of U.P. and 2 Others, (Writ Tax No. 1756 of 2024) decided on 21.10.2024 and again division bench in the matter of Atul Agrwal v. State of U.P. and 2 Others ( Writ Tax No. 1585 of 2024 decided 18.10.2024).

9. The view taken by the division benches as cited before the Court are absolutely correct on the principle that nobody should be condemned unheard and legislature while incorporating the provision of notice/ show cause notice, intended so.

10. Recently, in the matter of M/s Akriti Food Industry LLP v. State of U.p. and 3 Others, Writ Tax No. 2070 of 2024 decided on 3.12.2024 , the Court has set aside the identical order. Accordingly, I also do not find the orders to be sustainable and equally do not consider it necessary to keep this petition pending by inviting response.

11. Learned counsel for the petitioner has placed reliance upon the order of Division Bench of this Court in the case of M/s Sai Dham Residency v. State of U.P. and another in Writ Tax No.- 1175 of 2024 decided on 28th August, 2024. Vide paragraph 3 and 4 of the M/s Sai Dham Residency the Court has held thus:

"3. In view of the above position admitted on the record, the only conclusion possible to be drawn is that the petitioner was never afforded any opportunity of personal hearing.

4. Thus, upon service of notice, the petitioner had been called to file its reply only. Consequently, non-compliance of that show cause notice may have only led to closure of opportunity to submit written reply. However by virtue of the express provision of Section 75 of the Act, even in that situation the petitioner did not lose its right to participate at oral hearing and establish at that stage itself that the adverse conclusions proposed to be drawn against the petitioner, may be dropped."

12. It is a settled legal principle evolved in a catena of decisions by this Court and the Supreme Court that provisions contained under tax statute have to be very strictly construed the hence provisions providing for a particular pre-requisite like opportunity of oral hearing before passing of final order, have to be complied with by the authority. Authority cannot take it for granted that provisions providing for personal hearing is an empty formalities and representation to notice would suffice the need. In the case of Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and others (2018) 9 SCC 1 in which the Supreme Court vide paragraph 24 has very clearly observed thus:

"24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be

interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/ certain objects in certain circumstances, it cannot be expanded/ interpreted to include those, which were not intended by the legislature."

13. In view of above, I hereby direct that the order passed by the assessing officer dated 6th October, 2021 shall be taken to be notice within the meaning of Section 74 of the GST Act, 2017 to enable the petitioner to file his objections and place its documents before assessing officer/ competent authority for its consideration.

14. The petitioner shall be submitting his reply alongwith document within a period of eight weeks from today and thereafter assessing officer/competent authority shall be giving due consideration to the objections and documents filed and opportunity of hearing as well and thus shall be taking decision afresh within a further period of four weeks.

15. With these above observations and directions this petition stands disposed of.

Order Date :- 1.5.2025 Atmesh