

Hari Shanker Transport v. Commissioner of Commercial Tax U.P. Lucknow & Anr.

Validity of a GST demand order passed under Section 73(9) of the CGST Act, 2017 without setting out relevant facts and basis of decision as mandated under Section 75(6) of the Act.

Date of Order: March 11, 2025
Case Law No: GIB-AHC-2025-50
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

The petitioner, a transport firm, was issued a scrutiny notice under Section 61 of the GST Act on 30.11.2023 pointing out discrepancies in its returns. The petitioner remained unaware of the notice as it was uploaded only on the departmental portal and accordingly filed no reply. A subsequent show cause notice under Section 73 of the Act was issued on 27.01.2024, requiring reply by 27.02.2024 and fixing personal hearing on 20.02.2024. The petitioner again did not respond. Consequently, the Deputy Commissioner, State Tax, Sector-3, Sonbhadra passed a demand order dated 27.04.2024 under Section 73(9) of the Act, creating a tax liability of ₹85,84,759/-. A rectification application filed by the petitioner under Section 161 of the Act was also rejected vide order dated 25.10.2024. Both orders were challenged by way of the present writ petition.

Court Observations (Verbatim)

Para 7: "A bare look at the order impugned dated 27.04.2024 passed under Section 73(9) of the Act reveals that the same only makes reference to issuance of two notices, the fact that they have not been responded to, and a demand has been raised."

Para 8: "The manner of passing of order dated 27.04.2024 falls foul of the requirements of Section 75(6) of the Act, which requires that 'the proper officer, in his order shall set out the relevant facts and the basis of his decision', the statutory requirements for passing an order by setting out relevant facts and basis for the decision are totally missing from the order dated 27.04.2024. Even if no response was filed to the notices issued under Sections 61

and 73 of the Act, it was incumbent on respondent no.2 to pass an order in compliance of the provisions of Section 75(6) of the Act, as a final order should be self contained and merely making reference to the previous notices while passing the said order does not suffice for making it a self contained order."

Final Verdict

The writ petition was allowed. The demand order dated 27.04.2024 was quashed and set aside. The matter was remanded back to the Deputy Commissioner, State Tax, Sector-3, Sonbhadra, with a direction to afford the petitioner an opportunity to file a reply to the Section 73 show cause notice within four weeks, followed by a personal hearing, and thereafter pass a fresh order in accordance with law.

□ In favour of the Assessee

Cases / Provisions Referred

No case laws cited by the Court. The following statutory provisions of the GST Act, 2017 were referred to:

- Section 61 — Scrutiny of Returns
- Section 73 — Determination of tax not paid / short paid (Show Cause Notice)
- Section 73(9) — Order of demand after adjudication
- Section 75(6) — General provisions relating to determination of tax: requirement to set out relevant facts and basis of decision in the order
- Section 161 — Rectification of errors apparent on the face of record