

प्रेषक,

आयुक्त, राज्य कर,

उ0प्र0, लखनऊ।

सेवा में,

अपर आयुक्त, राज्य कर, गौतमबुद्धनगर जोन, नोएडा,

समस्त अपर आयुक्त ग्रेड-1, राज्य कर, उ0प्र0,

समस्त अपर आयुक्त ग्रेड-2, राज्य कर, उ0प्र0,

(वाद अनुभाग)

लखनऊ:: दिनांक:: ०१ मई, 2025

महोदय,

कृपया मा0 उच्च न्यायालय, इलाहाबाद में दाखिल रिट टैक्स संख्या-1099/2025 मे0 ए0पी0एल0 अपोलो ट्यूब लि0 बनाम कमिश्नर, राज्य कर उ0प्र0 व अन्य के वाद में पारित निर्णय दिनांक 17.04.2025 (प्रति संलग्न) का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा व्यापारी की रिट याचिका को डिसमिस कर दिया गया है। मा0 उच्च न्यायालय ने पारित निर्णय में माना है कि व्यापारी को जी0एस0टी0 अधिनियम के अन्तर्गत न्याय-निर्णयन आदेश के विरुद्ध प्रथम अपील करने का वैकल्पिक वैधानिक अधिकार प्राप्त था, जिसका उपयोग व्यापारी द्वारा नहीं किया गया। पारित आदेश दिनांक 17.04.2025 के मुख्य अंश निम्नवत् हैं -

5. The order impugned, admittedly, is appealable, however, except for indicating that the petitioner has no option but to approach this Court for exercise of constitutional right to carry on trade and business as per the law and for quashing of tax and penalty, not a word has been indicated for bypassing the alternative remedy available to the petitioner of filing appeal.
6. The parameters for exercising jurisdiction under Article 226 of the Constitution of India are well settled, wherein it can be exercised sparingly and only in exceptional circumstances despite availability of statutory remedy. Recently, Hon'ble Supreme Court in Jaipur Vidyut Vitran Nigam Limited vs. MB Power (MP) Limited : (2024) 8 SCC 513, after referring to the judgement in Radha Krishan Industries vs. State of H.P. : (2021) 6 SCC 771, has laid down that though availability of an alternative remedy is not a complete bar in the exercise of power of judicial review by the High Courts, the recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. It was observed that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India.
7. In the present case, the petitioner has failed to point out any extraordinary and exceptional circumstance for bypassing the statutory alternative remedy. Neither there has been a failure of principles of natural justice nor it is the case of the petitioner that proceedings were without jurisdiction, which are the grounds under which the bar of statutory remedy does not come in the way of entertaining the petitions under Article 226 of the Constitution of India.

अतः उक्त महत्वपूर्ण निर्णय को इस पत्र के साथ संलग्न कर इस आशय के साथ प्रेषित किया जा रहा है कि स्वयं से अवगत होते हुए अपने अधीनस्थ समस्त अधिकारियों को भी उक्त निर्णय से अवगत कराये तथा मा० उच्च न्यायालय द्वारा दिये गये उक्त निर्णय का संज्ञान लेते हुए कार्यवाही सुनिश्चित की जाये।

यह पत्र आयुक्त, राज्य कर, उ०प्र० के अनुमोदनोपरान्त जारी किया जा रहा है।

संलग्नक-उपरोक्तनुसार।

भवदीय,

(अमर नाथ यादव)

अपर आयुक्त (विधि), राज्य कर,
उत्तर प्रदेश।

पृष्ठांकन पत्र संख्या व दिनांक उक्त।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- विशेष सचिव, राज्य कर अनुभाग-3, उ०प्र० शासन, लखनऊ।
- 2- अपर आयुक्त ग्रेड-1/2 (उ०न्या०कार्य), राज्य कर, प्रयागराज/लखनऊ।
- 3- संयुक्त आयुक्त (आई०टी०), राज्य कर, मुख्यालय, लखनऊ को इस निर्देश के साथ प्रेषित कि उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।


9.5.25

अपर आयुक्त (विधि), राज्य कर,
मुख्यालय, लखनऊ।

Chief Justice's Court

Case :- WRIT TAX No. - 1099 of 2025

Petitioner :- APL Apollo Tubes Limited

Respondent :- Commissioner, State Tax GST, UP, Commercial Tax Head Office, Vibhuti Khand, Gomti Nagar and Another

Counsel for Petitioner :- Prakhar Shukla with RS Sharma

Counsel for Respondent :- C.S.C., Ankur Agarwal

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Kshitij Shailendra, J.

1. This petition, under Article 226 of the Constitution of India, is directed against order dated 05.02.2025 passed by respondent No. 2, Joint Commissioner, Corporate Circle - II, State Tax, Ghaziabad (Annexure No. P-1).

2. The petitioner was issued notice under Section 61 of the Uttar Pradesh Goods and Services Tax Act, 2017 ('the Act') regarding discrepancies noticed on scrutiny of returns for the year 2017-18 on 19.04.2023. A response was filed by the petitioner on 25.05.2023, which was not found satisfactory and as such, a notice under Section 73 of the Act was issued in relation to two issues (i) Difference in relation to duty credit scrip in GSTR-1 and GSTR-3B and (ii) Amount of Rs. 77,88,28,755.17/- reflected in Column_50 in GSTR-9C pertaining to adjustments in turnover due to reasons not listed above.

3. A response to the notice under Section 73 of the Act was submitted by the petitioner, which was accepted *qua* issue (i) pertaining to duty credit scrip, however, in relation to issue (ii) pertaining to adjustments in turnover in Column_50 in GSTR-9C, it was found that the claim made based on high sea sale and high

sea purchase were not reflected in the monthly returns or annual returns, based on which, a notice under Section 74 of the Act was issued to the petitioner. A response was filed and after providing opportunity of hearing, the response/clarification, submitted by the petitioner, was not accepted and the order impugned dated 05.02.2025 was passed indicating Rs. 77,88,28,755.17/- as evaded turnover and ordering for payment of tax, penalty and interest.

4. Several pleas have been raised in the writ petition, seeking to contest the conclusion arrived at by the Assessing Authority. All the pleas, which are sought to be raised, pertain to the merit of the order passed and essentially, seek this Court to act as an Appellate Authority *qua* the order impugned with reference to the material, which was placed before the Authority and has been made part of record of the present petition. Pleas pertaining to violation of principle of natural justice and lack of jurisdiction have been raised, however, the said pleas only remain in words and have not at all be substantiated.

5. The order impugned, admittedly, is appealable, however, except for indicating that the petitioner has no option but to approach this Court for exercise of constitutional right to carry on trade and business as per the law and for quashing of tax and penalty, not a word has been indicated for bypassing the alternative remedy available to the petitioner of filing appeal.

6. The parameters for exercising jurisdiction under Article 226 of the Constitution of India are well settled, wherein it can be exercised sparingly and only in exceptional circumstances despite availability of statutory remedy. Recently, Hon'ble Supreme Court in **Jaipur Vidyut Vitran Nigam Limited vs. MB Power (MP) Limited : (2024) 8 SCC 513**, after referring to the judgement in

Radha Krishan Industries vs. State of H.P. : (2021) 6 SCC 771, has laid down that though availability of an alternative remedy is not a complete bar in the exercise of power of judicial review by the High Courts, the recourse to such a remedy would be permissible only if extraordinary and exceptional circumstances are made out. It was observed that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India.

7. In the present case, the petitioner has failed to point out any extraordinary and exceptional circumstance for bypassing the statutory alternative remedy. Neither there has been a failure of principles of natural justice nor it is the case of the petitioner that proceedings were without jurisdiction, which are the grounds under which the bar of statutory remedy does not come in the way of entertaining the petitions under Article 226 of the Constitution of India.

8. In view of above discussion, we do not find any reason to invoke our extraordinary jurisdiction in the present case. The petition is, therefore, dismissed, leaving it open for the petitioner to avail alternative remedy in accordance with law.

Order Date :- 17.4.2025
Mukesh Pal

(Kshitij Shailendra, J) (Arun Bhansali, CJ)