

Court No. - 6

Case :- WRIT TAX No. - 428 of 2025

Petitioner :- M/S Tewari Construction And Gen. Suppliers Lko (Pramod Tiwari Sole Proprietor)

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Tax And Registration Lko. And 3 Others

Counsel for Petitioner :- Aayush Pankaj Tiwari, Durga Prasad Dubey, Peeyush Pankaj

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard Shri Aayush Pankaj Tiwari, learned counsel for the petitioner and learned Standing Counsel for the State.

2. Present petition has been filed challenging the order dated 27.08.2019 passed under Section 62 of GST Act as well as the order dated 29.01.2025 whereby the appeal was dismissed as being limitation.

3. Submission of learned counsel for the petitioner is that the order dated 27.08.2019 is bereft of any reasoning whatsoever in the manner in which the best judgment assessment has been finalized. He further argues that no notice under Section 46 of GST Act was ever served, as such, recourse to Section 62 of GST Act was an improper exercise of power. He lastly argues that no opportunity of hearing was also granted to the petitioner prior to passing of the said order.

4. In the light of the said, learned Standing Counsel, based upon instructions, states that the order was passed on 27.08.2019 taking recourse to Section 62 of GST Act and the appeal was rightly dismissed as being beyond limitation. He, thus, argues that the writ petition is liable to be dismissed.

5. Considering the submissions made at the Bar, in terms of the provisions contained in the GST Act, recourse to Section 62 of GST Act is permissible only in the event when a person fails to furnish the return under Section 39 or Section 45 of GST Act and fails to do so even after the service of notice prescribed under Section 46 of GST Act. Section 46 and Section 62 of GST Act are quoted herein below:

"46. Notice to return defaulters.—Where a registered person fails to furnish a return under Section 39 or Section 44 or Section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

62. Assessment of non-filers of returns.—(1) Notwithstanding anything to the contrary contained in Section 73 or Section 74 where a registered person fails to furnish the return under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within 198[sixty days] of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of Section 50 or for payment of late fee under Section 47 shall continue."

6. On a plain reading of the said provision, it is clear that if a person fails to furnish the return, it is incumbent upon the assessing authority to serve notice under Section 46 of GST Act and in the event, he fails to file the return even after the notice, recourse to Section 62 of GST Act is available. It is also clear that even while exercising the power vested by virtue of Section 62, it is incumbent upon the assessing authority to take into account all the relevant material which are available or which have been gathered, thus, it is clear that the order under Section 62 of GST Act is to be based upon some material. In the present case, there is no mention that a notice under Section 46 of GST Act was served upon the petitioner. Even, the order under Section 62 of GST Act does not reflect any material based upon which the assessment has been finalized.

7. Finding the order to be contrary to the mandate of Section 46 of GST Act as well as lacking in reasonings which are *sine qua non* for exercising the power under Section 62 of GST Act, both the orders i.e. 27.08.2019 & 29.01.2025 cannot be sustained and are quashed.

8. Matter is remanded to the Assessing Authority to pass a fresh reasoned order after serving a notice to the petitioner as prescribed under Section 46 of GST Act and after giving an opportunity of hearing, in accordance with law.

9. Present petition stands ***allowed*** in above terms.

Order Date :- 14.5.2025

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