IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI G. NARENDAR
AND
HON'BLE SRI JUSTICE ALOK MAHRA

WRIT PETITION (M/B) NO. 123 OF 2025

21st APRIL, 2025

M/s Modine Thermal Systems Private Limited ...... Petitioner

Versus

State of Uttarakhand and Others ...... Respondents

Counsel for the petitioner : Mr. Tarun Pande and Mr. Amar Pratap Singh, learned counsel

Counsel for the respondents : Ms. Pooja Banga, learned Brief Holder for the State

JUDGMENT: (per Hon'ble The Chief Justice Sri G. Narendar)

Heard the learned counsel for the petitioner and learned State Counsel.

2) The case in a nutshell is that the petitioner was visited with a showcause notice dated 18.06.2024 issued by the 2nd respondent in form GST ASMT–10 seeking the details and explanation pertaining to the difference in the

value of outward supplies declared in GSTR 1 and value of the E–way Bills raised in the financial year 2020-2021.

3) That the petitioner effected a reply to the show-cause notice dated 18.06.2024 by it's reply dated 17.07.2024; that on 28.11.2024, the 2nd respondent issued form DRC – 01 (SCN) to show-cause that why a demand of Rs. 71,57,938/- shall not be confirmed with interest for difference in value of outward supplies declared in GST R-1 and the value of E–way Bills raised during the relevant period. Further, under the said notice, the respondents scheduled a personal hearing on 20.12.2024 and mentioned the last date for submission of reply as 28.12.2024. The petitioner sought for adjournment of the date of personal hearing to a date after the submission of their reply. The request for adjournment was premised on the basis of the petitioner attempting to collate information pertaining to 2021.

4) In our opinion, the approach of the Revenue Authority in fixing the personal hearing date before the last date for submission of reply is akin to putting the cart before the horse. The submissions to be made during the personal hearing would necessarily be on the basis of the reply effected. The approach of the Authorities on

insistence of having a personal hearing prior to submitting a reply is contrary to the scheme of the Act also.

5) A conjunctive reading of Section 73, 74 and 75 makes it apparent that the approach adopted by the Authority is contrary to the scheme of the Act. Sub-Section 4 and 5 of Section 75 of the Act reads as under:-

> "75.(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.
>
> (5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:
>
> Provided that no such adjournment shall be granted for more than three times to a person during the proceedings."

6) The scheme of the Act enables the assessee to seek for adjournment not in excess of three times and it is pertinent to note that sub-section 5 succeeds sub-section 4, which enables the assessee to seek for a personal hearing. Section 75 relates to the procedural aspect that is required to be followed by the Authorities in the matter of determination of assessment, more particularly, of tax that has escaped assessment.

7) If the statute stipulates a matter to be performed in a particular manner, the same shall be performed in that manner only. Law in this regard is no more *res integra*

and is well-settled by catena of judgments of the Apex Court.

8) In the case on hand, the order does not disclose any justifiable reasons for rejecting the application for request for adjournment and that apart, as noted above, the approach itself appears to be incorrect and contrary to the scheme of Section 75, more particularly, sub-section 4 and 5 of Section 75.

9) In that view of the matter, the order of assessment is set-aside. The matter is remitted back to the competent authority to proceed from the stage of the 28.11.2024 notice.

10) No order as to costs.

The writ petition stands ordered accordingly.

G. NARENDAR, C.J.

ALOK MAHRA, J.

Dt: 21st April, 2025
Ujjwal