



2025:UHC:8827-DB

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**HON'BLE MR. G. NARENDAR, C.J.**

**HON'BLE MR. ASHISH NAITHANI, J**

**Writ Petition (M/B) No.212 of 2025**

M/s Kumaon Rosin Industries

..... Petitioner

Versus

Commissioner, State Goods and Services Tax and another

.....Respondent

**Presence:**

Mr. Tarun Pande, learned counsel for the Petitioner.

Ms. Pooja Banga, learned Brief Holder for the State of Uttarakhand.

**Per:Hon'ble Ashish Naithani, J.**

1. The Petitioner, *M/s Kumaon Rosin Industries*, is a proprietorship concern engaged in wholesale trading, having obtained Goods and Services Tax (GST) registration bearing GSTIN 05AGJPM4162E1ZL with effect from 01.07.2017. The business is carried on through its proprietor, Shri Ankur Mahajan, resident of Haldwani, District Nainital, Uttarakhand. The Petitioner subsequently applied for cancellation of its GST registration, which was allowed with effect from 30.11.2017.
2. On 27.01.2023, an intimation in Form DRC-01A was uploaded on the GST portal by the Respondent authorities, alleging excess claim of input tax credit (ITC) for the tax period July 2017 to March 2018.



3. Thereafter, on 22.08.2023, a Show Cause Notice (SCN) in Form DRC-01 was issued and uploaded on the GST portal, proposing to disallow ITC amounting to ₹1,52,994.12/- on the ground of a mismatch between the ITC claimed in GSTR-3B and the ITC reflected in GSTR-2A. The SCN further proposed to levy interest under Section 50 and penalty under Section 122(2) of the CGST/UKGST Act. No physical copy of the notice was admittedly served upon the Petitioner.
4. Subsequently, the Assistant Commissioner, Haldwani, Sector-3, passed an order-in-original dated 04.11.2023 (hereinafter “the impugned order”) under Section 73 of the CGST/UKGST Act. By this order, the Respondent confirmed the demand of ₹1,52,994.12/- towards excess ITC along with interest and penalty, without affording the Petitioner any opportunity of personal hearing as contemplated under Section 75(4) of the Act.
5. The Petitioner asserts that since the cancellation of its registration in 2017, it was not accessing the GST portal and was unaware of the proceedings initiated against it, as no notice or order was served through physical or alternative statutory modes prescribed under Section 169 of the Act.
6. The Petitioner further submits that the mismatch arose due to an error committed by one of its suppliers, *Triumphant Institute of Management Education Pvt. Ltd.*, which had inadvertently reported supplies in the B2C column instead of the B2B column in its GSTR-1 returns. Certificates acknowledging such mistakes were subsequently issued by the said supplier in terms of Circular No. 183/15/2022 dated 27.12.2022, issued by the Central Board of Indirect Taxes and Customs, clarifying that such clerical mismatches could be corrected.



7. It is also on record that the availability of an appellate remedy under Section 107 of the CGST Act was uncertain when the impugned order was passed. A Division Bench of this Court, by judgment dated 20.06.2022 in Special Appeal No. 123 of 2022, had held that orders passed by the Assistant Commissioner were not appealable. That judgment was subsequently reviewed on 24.06.2024, recognizing that such orders were indeed appealable. However, by the time the appellate remedy was clarified, the limitation prescribed under Section 107(4) had lapsed, leaving the Petitioner without an effective statutory remedy.
8. Aggrieved by the impugned order dated 04.11.2023, the Petitioner approached this Court by way of the present writ petition under Article 226 of the Constitution of India, challenging the demand of tax, interest, and penalty, inter alia, on the grounds of violation of principles of natural justice, improper service of notice, and absence of effective appellate remedy at the relevant time.
9. Heard Mr. Tarun Pande, learned counsel for the Petitioner and Ms. Pooja Banga, learned Brief Holder for the State, perused the records.
10. Learned counsel for the Petitioner, Mr. Tarun Pande, contends that the entire proceedings culminating in the impugned order dated 04.11.2023 stand vitiated for violation of principles of natural justice.
11. It is submitted that the Show Cause Notice dated 22.08.2023 in Form DRC-01, as well as the earlier intimation dated 27.01.2023, were uploaded only on the GST portal. They were never served through any of the statutory modes contemplated under Section 169 of the CGST/UKGST Act. Since the GST registration of the Petitioner stood



cancelled with effect from 30.11.2017, the Petitioner was under no obligation to access the GST portal periodically. Consequently, the Petitioner did not become aware of the proceedings until much later.

12. It is further submitted that Section 75(4) of the Act mandates the grant of a personal hearing before passing any order adverse to the assessee. In the present case, no such opportunity was provided. The impugned order has been passed mechanically, without any consideration of the Petitioner's submissions or supporting evidence.
13. On merits, it is urged that the alleged mismatch in ITC between GSTR-3B and GSTR-2A occurred due to a reporting error committed by one of the Petitioner's suppliers, Triumphant Institute of Management Education Pvt. Ltd. The supplier inadvertently reported B2B supplies under the B2C column while filing its GSTR-1 returns. Certificates acknowledging this mistake have been issued by the supplier, in accordance with Circular No. 183/15/2022 dated 27.12.2022, issued by the CBIC. The said circular permits reconciliation of ITC mismatches on the strength of third-party certification. In view of this, the Petitioner availed ITC on the basis of valid tax invoices and actual payment of tax to the supplier. The denial of such credit, it is contended, is therefore contrary to law.
14. It is also contended that when the impugned order was passed, the appellate remedy under Section 107 of the CGST Act was effectively unavailable by reason of the judgment of this Court dated 20.06.2022 in *Vinod Kumar v. State of Uttarakhand* (SPA No. 123 of 2022). That judgment, which held that orders passed by the Assistant Commissioner were not appealable, was subsequently reviewed on 24.06.2024. By that time, the statutory period of limitation for filing an



appeal had lapsed. Thus, the Petitioner had no efficacious alternative remedy and was compelled to invoke writ jurisdiction.

15. On these grounds, learned counsel for the Petitioner submits that the impugned order is liable to be quashed as having been passed in violation of natural justice, without jurisdiction, and contrary to settled law.
16. Per contra, learned Brief Holder for the State, Ms. Pooja Banga, supports the impugned order. It is urged that the proceedings have been validly conducted under Section 73 of the CGST/UKGST Act, after due issuance of notice and intimation through the common GST portal. It is contended that under Section 169(1)(d) of the Act, service of notice by making it available on the GST portal is a recognized statutory mode, and the Petitioner cannot feign ignorance of the same.
17. It is further submitted that the Petitioner has admittedly claimed excess ITC in its GSTR-3B returns, which is not reflected in GSTR-2A, thereby evidencing incorrect availment of credit. The burden of proving eligibility of ITC rests upon the claimant, and mere reliance on certificates from third parties cannot absolve the Petitioner of its statutory obligation. The Respondent authorities were justified in disallowing such inadmissible ITC and in raising a consequential demand of tax, interest, and penalty.
18. The learned counsel for the State also contends that the writ petition is not maintainable in view of the statutory appellate remedy under Section 107 of the Act. It is submitted that once the review judgment dated 24.06.2024 clarified the position, the Petitioner could have preferred an appeal within the condonable period, but chose not to do so. Therefore, the extraordinary jurisdiction of this Court under



Article 226 ought not to be invoked when efficacious remedies under the statute are available.

19. This Court is of the considered view that the impugned proceedings culminating in the order dated 04.11.2023 passed by the Assistant Commissioner, State Tax, Haldwani, cannot be sustained in law.
20. It is not in dispute that the Petitioner's registration under the GST regime stood cancelled with effect from 30.11.2017. Despite such cancellation, the Respondent Department initiated proceedings for the financial year 2017-2018 by issuing an intimation in Form DRC-01A dated 27.01.2023 and a Show Cause Notice in Form DRC-01 dated 22.08.2023, both of which were uploaded solely on the common GST portal. The Department did not effect service by any other statutory mode envisaged under Section 169 of the CGST/UKGST Act, such as tendering to the assessee, service by post, courier, or email.
21. This Court is persuaded by the consistent view taken by the Allahabad High Court in *M/s Ahs Steels v. Commissioner of State Taxes* and *M/s Katyal Industries v. State of U.P.*, as also by the Madras High Court in *M/s SLA Enterprises v. Dy. State Tax Officer*, that once registration has been cancelled, an assessee cannot be expected to monitor the GST portal indefinitely. Service must instead be effected through alternative valid modes. In the present case, the Petitioner was deprived of effective communication on account of the Department's exclusive reliance on portal upload, which thereby curtailed its right to defend.



22. The impugned order records no opportunity of personal hearing having been granted to the Petitioner. Section 75(4) of the Act makes it mandatory for the adjudicating authority to afford such a hearing before passing any order adverse to the assessee, embodying the fundamental principle of audi alteram partem. The record reveals that no hearing was fixed or held, and this omission is fatal to the proceedings, as the Hon'ble Supreme Court in *Radha Krishan Industries v. State of Himachal Pradesh*, (2021) 6 SCC 771, has underscored the necessity of adherence to natural justice in fiscal adjudications.
23. On the merits of the alleged demand, the Petitioner has placed on record certificates from its supplier, *Triumphant Institute of Management Education Pvt. Ltd.*, acknowledging that the mismatch arose due to inadvertent reporting of B2B supplies as B2C in GSTR-1. The Petitioner has also relied upon Circular No. 183/15/2022 dated 27.12.2022 issued by the CBIC, which contemplates reconciliation of such mismatches through supplier certification in cases where the difference is up to ₹5 lakhs. The adjudicating authority did not consider these materials before directing the reversal of the ITC. Whether the credit was admissible or not is a matter requiring examination upon a proper hearing, but the authority failed to conduct such an exercise.
24. As regards the objection of the State concerning the availability of an appellate remedy under Section 107 of the CGST Act, this Court is not inclined to non-suit the Petitioner. It is a matter of record that at the relevant time, in view of the Division Bench judgment dated 20.06.2022 in *Vinod Kumar v. State of Uttarakhand* (SPA No. 123 of 2022), orders passed by an Assistant Commissioner were held to be non-appealable. The said position was only clarified on 24.06.2024 in



review. By that time, the limitation prescribed under Section 107 had already lapsed.

25. Thus, the appellate remedy was illusory and inefficacious in the present case. The settled principle of law, as laid down in *Whirlpool Corporation v. Registrar of Trade Marks*, (1998) 8 SCC 1, permits writ intervention where natural justice has been breached or where no efficacious alternative remedy exists. Both conditions are met herein.

26. In the cumulative effect of these findings, this Court concludes that the impugned order dated 04.11.2023 suffers from a violation of statutory provisions and natural justice. The order, therefore, cannot be sustained and is liable to be set aside, with the matter remanded to the authority for fresh adjudication in accordance with law.

## ORDER

In view of the foregoing conclusions, this Court is of the considered opinion that the impugned order dated 04.11.2023 passed by the Assistant Commissioner, State Tax, Haldwani, Sector-3, cannot be sustained.

Accordingly, the impugned order dated 04.11.2023 (Annexure No. 3) is **quashed**. The matter is remanded back to Respondent No. 2, who shall be at liberty to initiate fresh proceedings, if so advised, by issuing a proper Show Cause Notice in strict compliance with Section 169 of the CGST/UKGST Act.

The authority shall afford the Petitioner adequate opportunity to file a reply, shall consider the documents, including supplier certificates



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and CBIC Circular No. 183/15/2022, relied upon by the Petitioner, and shall mandatorily grant a personal hearing in terms of Section 75(4) before passing any order.

It is clarified that this Court has not expressed any opinion on the merits of the ITC claim. All issues are left open for adjudication afresh by the competent authority. The adjudication shall be concluded expeditiously, preferably within a period of three months from the date of receipt of a certified copy of this order.

The writ petition stands disposed of accordingly.

No order as to costs.

**G. NARENDAR, C.J.**

**ASHISH NAITHANI, J.**

Dated:16.09.2025

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