Case Citation: (2026) taxcode.in 1609 HC

2026:AHC:186219

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**WRIT TAX No. - 2718 of 2026**

M/S Nagarjuna Agro Chemicals Pvt. Ltd.

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

| | | |
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| Counsel for Petitioner(s) | : | Shubham Agrawal |
| Counsel for Respondent(s) | : | C.S.C. |

**Court No. - 53**

**HON'BLE VIKAS BUDHWAR, J.**

1. Heard Sri Shubham Agrawal, learned counsel for the petitioner and Sri N. P. Singh, learned Standing Counsel, who appears for State-respondents.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits thus with the consent of the parties, writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that the writ petitioner is engaged in supplying of products related to agricultural use and is/was having its registered office situated at 6-3-12119/24, Flat No.301, 3rd Floor, Ujjwal Bhavishya Complex, Street No.4, Uma nagar, Begumpet, Hyderabad, registered with the GST Department vide GSTIN 09AABCN5531F1ZM. As per the writ petitioner, in the financial year 2018-2019, there happened to be a dispute between the Directors of the company due to which the complete operations of the company was put on hold from 28.10.2019 and several petitions came to be filed before the NCLT, Hyderabad by the directors against each other. However, recovery notices came to be issued by the respondents which came to be served through speed post at the registered office of the company on 11.08.2022. A show cause notice under Section 74 read with Section 122(1) of UPGST Act, 2017 vide FORM GST DRC-01 for the period 2017-2018 to 2020-2021 were issued by the Deputy Commissioner of SGST, on three issues i.e. (a) valuation of the stock transfer of leftover goods from Kanpur Branch back to Wardha Factory; (b) Classification of the exempted goods, "light trap" used in agriculture field to protect the crops from insects and (c) RCM liability on freight inward, legal expenses and freight outwards. Accordingly, four orders came to be passed

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by the Deputy Commissioner of State Tax, UPGST, Sector- 2, Commercial Tax, 3rd Floor, Lakhanpur, Kanpur, third respondent for the period 2017-18 to 2020-21 under Section 74 of the Act. On 01.08.2022, notice for recovery under Section 79 was issued. Simultaneously on 11.08.2022, Sri Mukund Maheshwari and Smt. Neeta Danga, who happened to be the directors of the company residing at Hyderabad came to know about the said recovery notice. On 11.08.2022, a request letter was immediately sent by Shri Mukund Maheshwari, Director of the company, to the Deputy Commissioner, SGST, Kanpur requesting to keep the recovery proceedings in abeyance as the company and its directors had approached the NCLT, Hyderabad due to disputes against Shri Shrikant Rathi, who was the authorized secretary before UP GST Authorities, Kanpur. Aggrieved against the order passed by the respondent no. 3 under Section 74 of the GST Act, the writ petitioner preferred Writ Petition Nos. 335, 336, 341 and 343 of 2023 taking a ground that the respondent no. 3 had not issued ASMT-10 under Section 61 and has directly issued intimation of demand notice under Section 75(5) in Form DRC-01A and thereafter show cause notice under Section 74 in Form DRC-01 for the period 2017-2018 to 2020-2021. The writ petitions came to be on 20.04.2023, 25.07.2023, 15.05.2023 and 24.02.2023 being Writ Tax No. 341 of 2023, Writ Tax No. 335 of 2023, Writ Tax No. 336 of 2023, and Writ Tax No. 343 of 2023. The order passed in Writ Tax No. 341 of 2023, for the sake of illustrations dated 20.04.2023 is quoted hereinunder:

> *"Short question which is raised in the present petition is as to whether the department is enjoined to issue a notice under sub-section 3 of Section 61 of Central Goods and Service Tax Act, 2017 once returns have been submitted by the assessee before initiating action under Section 74 of the Act or not ?*
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> *The petitioner is an assessee under the GST regime and has submitted returns for the assessment year 2017-18. The department apparently has not initiated any action referable to Section 61 of the Act. It transpires that the proceedings under Section 74 have been initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods. The department has examined the issue and ultimately passed the order impugned whereby the tax previously paid was found short and a demand has been raised for deposit of appropriate short fall in the deposit of tax as also interest and penalty.*
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> *Learned counsel for the petitioner submits that since returns had been*

*submitted by the petitioner for the period in question, therefore, the appropriate course open for the department was to have pointed out deficiency in the returns submitted by the petitioner so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act.*

*Section 61 of the Act, 2017 reads as under:-*

*"(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.*

*Sub-Section (2): In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.*

*Sub-Section (3): In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74."*

*Section 61 regulates scrutiny of returns. In the process of scrutiny of such returns the proper officer has been vested the jurisdiction to examine the return and in case any discrepancies are notice therein the proper officer can intimate such discrepancy to the assessee with the object of conferring an opportunity upon the assessee to rectify such discrepancy. The discrepancy may be of different kinds. The proper officer is also vested with jurisdiction under Section 61 to proceed with issuance of notice against the assessee where the deficiency pointed out by the department is not rectified and no satisfactory explanation is furnished in that regard. The exigency, which is dealt with under Section 61 is therefore, quite distinct and is confined to the scrutiny of returns.*

*In the present case it does not appear that any discrepancy was noticed by the department in the returns of the petitioner nor any such deficiency was pointed out to the assessee for it to be rectified by it. The returns, therefore, remain intact. It is later at the stage of consideration of the return that the department has found that proper tax has not been deposited and consequently proceedings under Section 74 has been initiated and concluded against the petitioner. In the statutory scheme the course followed by the department would clearly be permissible in law. The argument that unless deficiency in return is pointed out to the assesee, and an opportunity is given to rectify such deficiency, that the*

*department can proceed under Section 74 is not borne out from the statutory scheme and the argument in that regard therefore, must fail.*

*The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.*

*So far as the judgment relied upon by the counsel for the petitioner in the case of M/S Vadivel Pyrotech Private Ltd. vs. The Assistant Commissioner, (2022 U.P.T.C. 1769), we find that the observations of learned single judge of Madras High Court therein is in the facts of that case and do not lay down any proposition of law which restricts the exercise of jurisdiction under Section 74 upon issuance of notice under Section 61(3) of the Act.*

*In our view, merely because no notices were issued under Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61. The argument is misconceived is thus, repelled.*

*In the facts of the case, we find that the petitioner has a remedy of preferring appeal which has not been availed. Various facts are asserted during the course of hearing to highlight the incapacity of the petitioner due to which the appeal could not be filed earlier.*

*In the facts of the case, we therefore, permit the petitioner to prefer such appeal within two weeks from today and in the event such an appeal is filed, the same shall be entertained without raising any objection with regard to limitation.*

*Subject to the observations made above, this petition is dismissed.*"

4. That thereafter the petitioners filed 4 appeals for the period 2017-2018 to 2020-2021 before the Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur on 03.05.2023 questioning the order passed by the respondent no. 3, Deputy Commissioner of State Tax, UPGST, Sector- 2, Commercial Tax, 3rd Floor, Lakhanpur, Kanpur under Section 74 of the UP GST Act.

5. During the pendency of the said appeals before the second respondent, the National Company Law Tribunal Bench- 1 Hyderabad *vide* its order dated 07.03.2025 in C.P. No. 203/241/HDB/2020 passed the order of winding up of the petitioner company under Section 242(1)(b) of the Companies Act, 2013 while appointing liquidator and direction was given to the liquidator to complete the liquidation proceedings within 6 months. Post passing of the winding-up order, the counsel for the petitioner who had filed appeal before the respondent no. 2 informed the respondent no. 2 by sending email dated

15.07.2025 about the pendency of the case before NCLT and also informed about the passing of the winding-up order against the petitioner company on 07.03.2025 with a prayer that the appellate/ legal proceedings be kept in abeyance by the respondent no. 2, Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur. The said communication was made by the counsel for the petitioner so as to accord and enable it to appear for personal hearing in that regard. That on 09.12.2025, the NCLT appointed one Chevuturi Murali Mohan as liquidator by replacing of the earlier liquidator as he tendered his resignation. In para-20 of the petition, it has been asserted that on 07.04.2025, the NCLAT had passed an order for keeping the liquidation proceedings in abeyance. However, it has not stayed the operation of the winding-up order dated 07.03.2025 passed by the NCLT, Hyderabad but only future actions relating to liquidation were to be undertaken after passing of the winding-up order had been kept in abeyance. However, the second respondent, Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur proceeded to pass the order dated 10.11.2025, four in numbers for the period 2017-2018 to 2020-2021 rejecting the appeals.

6. Questioning the order dated 10.11.2025 passed by Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur relatable to the financial year 2017-18, 2018-19, 2019-20 and 2020-2021, the present petition came to be preferred.

7. This Court entertained the writ petition on 14.08.2026 while passing the following orders:

> *"1. On 07.07.2026, the following orders were passed.-*
> *"1. Contention of the learned counsel for the petitioner is that the company through its Director had preferred an appeal, however, during the pendency of the appeal, the company stood wound up and without the leave of the NCLT, the proceedings could not have been decided in ex parte manner.*
> *2. Learned Standing Counsel to seek instructions.*
> *3. Put up this case on 27.07.2026, as fresh."*
> *2. Today, instructions have been produced under the signature of the respondent dated 23.07.2026 taking shelter of section 279 of the Companies Act, 2013 so as to contend that there would be no bar in proceeding with the matter particularly when the bar would arise only on those contingencies wherein fresh proceedings are initiated.*

*3. Sri Shubham Agarwal has invited attention of the Court towards Section 279 so as to contend that the words qualified therein includes "if pending at the date of the winding up order." Submission is that the bar contained under Section 279 would be applicable also in the pending proceeding.*

*4. Sri N.P. Singh, learned Standing Counsel seeks time to file affidavit.*

*5. Affidavit shall be filed by 25.08.2026. Rejoinder affidavit by 03.09.2026.*

*6. Put up this case on 07.09.2026, as fresh.*

*7. Instructions filed today are taken on record and marked as Appendix 'A'."*

8. A counter affidavit has been filed by the respondent nos. 2 and 3 sworn by Deputy Commissioner of State Tax, UPGST, Sector- 2, Commercial Tax, 3rd Floor, Lakhanpur, Kanpur, to which a rejoinder affidavit has been filed.

9. As noted above, the counsel for the parties do not propose to file any further affidavit.

10. Learned counsel for the writ petitioner has sought to argue that the order impugned passed by the appellate authority/ second respondent, which are four in number dated 10.11.2025, referable to the financial year 2017-2018 to 2020-2021, cannot be sustained for even a single moment. Elaborating the said submissions, it is contended that first of all, once the company in question stood liquidated and wound up then the counsel(s)/ advocates who are appearing on behalf of the company or the directors lost their right to represent a party, particularly, when the only competent authority to appoint or engage any lawyer/ advocate is the liquidator in that regard. Further submission is that in view of the provisions contained under Section 279 of the Companies Act, 2013, once the company stands wound up then no suit or other legal proceedings pending or instituted afresh can continue in that regard. The contention is that had the lawyer/ advocate been appointed by the liquidator then the entire aspects would have been brought before the respondent no. 2 and thus there could not be any occasion to pass the order against the petitioner in that regard.

11. Countering the submissions so made by the learned counsel for the writ petitioner, Sri N.P. Singh, learned Standing Counsel who appears for the respondents submits that whatever might be liability is upon the petitioner and merely taking technical grounds would not absolve them. It is further contented on behalf of the revenue that Section 279 of the Companies Act,

2013 only applies to the new proceedings and not the pending proceedings in that regard. However, he submits that from the perusal of the appellate order, it would reveal that the same has been passed in an *ex-parte* manner without considering the say of the petitioner in that regard and thus, according to him, the order impugned be set aside and the matter be remitted back to the appellate authority to pass a fresh order.

12. I have heard learned counsel for the parties and gone through the records carefully.

13. Facts are not in issue. It is not in dispute that the petitioner-company came to be wound up by the National Company Law Tribunal on 07.03.2025. There were certain liabilities which were to be discharged by the company which entailed issuance of the notices and drawing of the proceedings by Deputy Commissioner of State Tax, UPGST, Sector- 2, Commercial Tax, 3rd Floor, Lakhanpur, Kanpur/ third respondent. Recovery proceedings were also initiated and four appeals came to be preferred before the Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur. Though the petitioner had appointed its lawyer/ counsel but post winding up of the company, the bone of contention between the parties is whether the lawyer/ the advocate so appointed by the company or the director would be authorized to prosecute the proceedings and represent them or not post liquidation.

14. Section 279 of the Companies Act, 2013, reads as under:

> *"Section 279: Stay of suits, etc., on winding up order.*
>
> *279. (1) When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose:*
>
> *Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.*
>
> *(2) Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."*

15. According to the learned Standing Counsel and the pleadings set-forth in the counter affidavit, the bar contained in Section 279 of the Act would only

apply in case of new/ fresh proceedings post winding up and not to the pending proceedings but a bare look of Section 279 of the Act would reveal that the word "if pending" has been employed. It is a cardinal principle of law and interpretation of the statute that each and every word so employed in the statute are to be given their meaning and they cannot be said to be superfluous.

16. Nonetheless, it has not been disputed by the learned Standing Counsel, who appears for the revenue that the company stood wound up on 07.03.2025 and a liquidator came to be appointed, who stepped into the shoes of the erstwhile. The question relatable to the fact that the counsel/ advocate who would be appointed to prosecute the proceedings and safeguard the interest of the company is to be appointed by the liquidator as the case may be is a vital question which needs to be considered.

17. Since it is the allegation of the petitioner that the petitioner has not been heard and the order is *ex-parte* in violation of principles of natural justice and the proceedings were unattended and a stand has been taken by Sri N.P. Singh, learned Standing Counsel as per the instructions received from his client that the matter be remitted back while setting aside the orders impugned which are four in number, thus without delving further into the same, accordingly, the writ petition is being decided in the following manner:

(a) The orders dated 10.11.2025 passed by Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur, respondent no. 2, which are four in number, annexed as Annexure-1 collectively for the period 2017-18, 2018-19, 2019-20 and 2020-21 are set aside.

(b) The matter stands remitted back to the appellate authority to pass fresh orders.

(c) The writ petitioner who is represented through his counsel shall communicate the said order to the liquidator within a period of three weeks days from today.

(d) The second respondent, Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur shall issue notice to the liquidator at its address within a period of 1 month.

(e) The date for personal hearing shall be fixed in advance giving at least

three weeks notice. Thereafter orders be passed after hearing the parties within a further period of four months therefrom.

18. Needless to point out that the passing of the order today may not be construed to be an expression that the Court has gone into the merits of the matter. However, the second respondent/ Additional Commissioner, Grade-II (Appeals)-I, State Tax, Kanpur shall pass an order strictly in accordance with law without being influenced or obsessed by any of the observations made hereinabove.

19. Accordingly, the writ petition stands **disposed of**.

**September 7, 2026**
Ashu

**(Vikas Budhwar,J.)**