Case Citation: (2026) taxcode.in 1698 HC

2026:AHC:210856-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 4103 of 2026

M/S Laxmi Narayan Gupta

.....Petitioner(s)

Versus

State Of U.P And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Nishant Mishra, Prerna Surolia
Counsel for Respondent(s)	:	C.S.C.

Court No. - 39

HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.

1. Heard Sri Nishant Mishra, learned counsel for the petitioner, Sri Ankur Agarwal, learned Senior Standing Counsel for the revenue and perused the record.

2. The present writ petition has been filed to challenge the order dated 30.06.2026 passed by respondent no.2 under Section 74 of the SGST Act, 2017 (hereinafter referred to as 'the Act') read with Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 for F.Y. 2021-22.

3. Present is the second leg of litigation. Petitioner has challenged the Adjudication Order dated 30.06.2026 passed in compliance to the order dated 02.04.2026 passed by this Court in **M/s Laxmi Narayan Gupta vs. State of U.P. and 2 others, 2026:AHC:70540-DB**. At that stage, violation of Section 75(7) of the Act was alleged with respect to the first set of Adjudication Orders dated 26.12.2025. The writ petition was disposed of with the following observations:

> *"7. The present writ petition is accordingly disposed of on the following terms :*
>
> *(i) The impugned adjudication orders dated 26.12.2025 and 05.01.2026 are set aside.*
>
> *(ii) The petitioner may file its final reply to the show-cause notice dated 05.08.2025 within a period of two weeks from today.*
>
> *(iii) If the petitioner wants to claim an opportunity to cross-examine any witness or to be supplied documents relied upon etc., the petitioner may necessarily make such application alongwith reply. Such application, if filed may be dealt with and decided before fixing any date for final hearing.*

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(iv) Thereafter, the adjudicating authority may fix and communicate the petitioner the date for personal hearing with at lease 15 days advance notice.

(iv) The adjudicating authority may then pass appropriate reasoned order within a further period of one month such that the proceedings may be concluded on or before 30.06.2026."

4. Thereafter, on 10.04.2026 respondent No.4 issued a fresh show cause notice to the petitioner rectifying the error noticed in the first leg of litigation. The petitioner responded to the same *vide* reply dated 17.04.2026 and prayed for cross-examination of the two *panch* witnesses as also the officer of the SIB, who had conducted the search. On 08.05.2026, respondent No.4 issued intimation to the petitioner to cross-examine all the witnesses, as prayed. On 15.05.2026, the two *panch* witnesses were cross-examined. According to the petitioner, they denied filling up of the *panchnama* details in their presence. It has also been suggested that the said witnesses indicated that they had signed on blank papers. Thereafter, on 29.05.2026, the SIB report was first furnished to the petitioner. It disclosed that respondent No.4 was himself involved in the conduct of search. Therefore, on the request of the petitioner, the proceedings were transferred to respondent No.2 vide order dated 12.06.2026 passed by the Additional Commissioner.

5. Consequently, respondent No.2 issued reminder notice on 16.06.2026. On 19.06.2026, the petitioner moved another application seeking cross-examination of respondent Nos.3 and 4. Without passing any order on that application, the final Adjudication Order has been passed on 30.06.2026 containing observations that respondent Nos.3 and 4 have been granted immunity under Section 157 of the UPGST Act, 2017. Therefore, they were not cross-examined.

6. Submission is, the order of the Court dated 02.04.2026 has yet not been complied. The proceedings suffer from violation of essential requirements of natural justice, being cross-examination of respondent Nos.3 and 4, wrongly denied.

7. Second and more materially, it has been submitted that the *panch* witnesses have clearly denied the preparation of the *panchnama* in their

presence. Therefore, the contents of the *panchnama* have not been proven. Unless respondent Nos.3 and 4 had been produced for cross-examination, the adjudicating authority could not have relied on the *panchnama*. To that extent, the reasoning of the adjudicating authority denying opportunity to the petitioner to cross-examine respondent Nos.3 and 4, is wholly unsustainable in law.

8. To the extent, such defects exist, it has been further submitted, no useful purpose may be served in relegating the petitioner to the forum of alternative remedy as the proceedings suffer from incurable defect.

9. On the other hand, learned Senior Standing Counsel would submit, to the extent, it was necessary, cross-examination has been allowed. The *panch* witnesses have not specifically or consistently denied preparation of the *panchnama* in their presence. Referring to the extract of the statement at page Nos.81 and 82 of the writ petition, it has been submitted that Sri Shivam Sahu first stated that he signed a blank document. He then stated that he did not remember if the paper that he signed had already been written upon or not. Only thereafter, to another question, if the paper that he signed was blank or written upon, he stated, it was blank. Similarly, Sri Naresh Kumar, the other *panch* witness specifically stated, on being called upon, he reached the place where the *panchnama* was being prepared. It clearly indicated that the *panchnama* was prepared in the presence of the *panch* witnesses.

10. Seen in that light, it has been further submitted, the cross-examination of respondent Nos.3 and 4, who had performed official duties was not required. Even if the reasoning given by the adjudicating authority may not be sustainable as no statutory immunity to such officers, to be cross-examined, yet, it is not the mandate of law that all officers performing official duties must necessarily be cross-examined to establish the contents of the documents. Referring to paragraph No.8 of the writ petition, it has been submitted that the preparation of the *panchnama* is duly admitted to the petitioner even, at this stage. For ready reference, contents of paragraph No.8 of the writ petition are quoted below:

> *"8. That the petitioner categorically submits that the partner of the firm Smt. Nidhi Gupta and her son Shri Abhimanyu Gupta, who were present during the course of search*

proceedings, were asked to sign the Panchnama and other documents, which were then signed by them without readingthe contents. Thus, the petitioner was not aware of the fact that panchnama records recovery of sheets loose of papers and diaries/register/notebook from the premises of the petitioner and also that the same was seized vide seizure order dated 01.03.2024, as copies of both the documents was not provided to the petitioner."

11. In such circumstances, it has been strenuously urged by learned Senior Standing Counsel that adequate remedy of appeal is available to the petitioner. All issues being pressed and all other issues involving merits may be tested in such proceedings.

12. Having heard learned counsel for the parties and having perused the record, while learned counsel for the petitioner may be right in his submission that mere production of a document may not lead to its proof, and to that extent, he has placed reliance on a decision of the Supreme Court in **Bareilly Electricity Supply Co. Ltd. vs. Workmen and others, (1971) 2 SCC 617**, that alone may not be enough to decide the present issue, in the limited context, whether the writ remedy, would be the most appropriate remedy available to the petitioner?

13. The defect as noticed in the first leg of proceedings, being violation of Section 75(7) of the Act, no longer exists. As to the further direction issued to pass a fresh order after making available to the petitioner all documents being relied against and after making available due opportunity of cross-examination, it is noted that insofar as copies of documents are concerned, those have been made available to him. The narration of dates made above clearly indicates that the authorities have acted in a manner, which may appear to indicate that efforts have been made to comply with the order. As to the exact compliance, opportunity to cross-examine the two *panch* witnesses has been granted. What conclusions may be drawn on the strength of these statements made, including the cross-examination statements, on the basis of those statements may involve a merit evaluation. That is possible to be done in the appeal proceedings, as well.

14. At present, for the foregoing reasons, we are consciously not making any observation with respect to the conclusions that may have been drawn

on the strength of the cross-examination statement of the two *panch* witnesses. We leave that issue open, at this stage. As to the cross-examination of the two revenue officers, it is undisputed to the petitioner that the cross-examination of those officers has been sought only for reason of preparation of the *panchnama*. By way of document, the *panchnama* is seen to exist. Not only its copy has been handed over to the petitioner, but both *panch* witnesses may have stated that they have affixed their signatures on certain documents that came to be described as the *panchnama*. Whether such document had been filled up or had not been filled up or prepared before the *panch* witnesses signed the document is not to be commented, at this stage.

15. While we accept the contention of learned counsel for the petitioner, that the reasoning offered by the adjudicating authority to decline opportunity of cross-examination of respondent Nos.3 and 4 is unsustainable, at the same time, it cannot be said by way of a corollary-therefore, that opportunity must necessarily have been granted by the adjudicating authority. Which witness is to be cross-examined, is an issue to be dealt with by the adjudicating authority on its own facts in each case.

16. However, as we have already observed that denial of such opportunity for a wrong reason may not lead to the opposite conclusion that such opportunity must necessarily have been granted, we are also mindful that the petitioner is not remediless in that regard. In the appeal proceedings that may be instituted against the adjudication order, it may remain with the petitioner to raise that issue. If considered proper, the appeal authority may itself allow for cross-examination of the witnesses of the respondent Nos.3 and 4 or call for appropriate report from the adjudicating authority on that count after providing for necessary measures regarding cross-examination.

17. Further submission that the prayer for cross-examination had been earlier granted by respondent No.4 but later that has been denied, may also not be seen as right that had already vested in the petitioner, inasmuch as that would remain an interlocutory order, that may have been subject to further proceedings.

18. Thus, without making any observation either on the merits and/or on the requirement of cross-examination of respondent Nos.3 and 4, but leaving that issue completely open to be canvassed by the petitioner on its own strength, before the appeal authority, we **dispose of** the present writ petition with the observation, subject to the petitioner filing an appeal within a period of four weeks from today, the same may be entertained and decided on its own merits without raising any objection as to limitation.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

October 8, 2026

Anurag/-