

**HIGH COURT OF JUDICATURE AT ALLAHABAD****WRIT TAX No. - 1743 of 2024**

M/S Saniya Traders

.....Petitioner(s)

Versus

Additional Commissioner Grade-2 And Another

.....Respondent(s)

Counsel for Petitioner(s)	: Srishti Gupta, Suyash Agarwal
Counsel for Respondent(s)	: C.S.C.

Reserved on 31.10.2025

Delivered on 3.12.2025

Court No. - 7**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard learned counsel for the parties and perused the record.
2. The present writ petition has been filed assailing the order dated 5.2.2024 passed by the Additional Commissioner, Grade02(Appeal)-II, State Tax, Moradabad, (Respondent No.1) U/s 74 of GST ACT 2017 in GST Appeal No. 0104/2023, for tax period June, 2021 for the year 2021-2022 and the order dated 20.12.2022 passed U/s 74 of GST Act, 2017, by the Respondent No.2, and further directing respondents not to initiate recovery of tax (IGST) of Rs. 4,17,997/-, Interest of Rs. 1,06,589/- and Penalty of Rs. 4,17,997/-, totaling to Rs. 9,42,584/- in pursuance to the impugned order dated 20.12.2022 passed by Assistant Commissioner, Moradabad Sector-1, Moradabad, Uttar Pradesh.
3. The learned counsel for the petitioner submits that the petitioner is a registered dealer and is having GSTN. The petitioner is engaged in the business of supply of waste, Parings and scrap of plastic, of Polymers, of Ethylene etc.

4. The petitioner purchased old scrap batteries from Mohan Enterprises, Muzaffarpur, Bihar on 28.6.2021 who in turn issued Tax Invoice No. ME 28/2021-22 and also E-way No. 821164498832 dated 28.6.2021. The said sale is duly reflected in GSTR No. 1. The petitioner also discharged its tax liability while making payment to the supplier, namely, Mohan Enterprises. The said transaction has duly been shown in the GSTR returns. The seller has also paid tax as per Section 49 of the Act. He further submits all payments made to the supplier including IGST through banking channel.

5. He submits that an inspection was conducted by Joint Commissioner, State Tax, Central Investigation Bureau, Annexi-3, old Secretariat, Bihar, Patna and alleged that 42 suppliers located in Uttar Pradesh have either not received any inward supply or no inward supply has been received by the supplier included in their supply chain nor any tax has been deposited. Therefore, inadmissible ITC have been acquired or transferred through inward and outward transaction on the basis of fictitious invoice without actual movement of goods. On the said basis, the purchases declared by the petitioner have been treated as non existing supply firm. Further, allegation has been made that no trading activity was found at the place of such supply.

6. On 27.9.2021 notice were issued on the basis of the alleged information to which the petitioner submitted a detailed reply clarifying each and every point. In the reply it was also provided that the Mohan Enterprises have filed the returns upto July, 2021 both GSTR-1 and GSTR-3B which clearly shows not only the sell but tax receipt has been deposited. Not being satisfied with the said reply, an order was passed under Section 74 reversing the input tax credit with an amount of Rs. 4,17,997/- and interest of Rs. 1,06,589/- and penalty of Rs. 4,17,997/- was imposed and against the same an appeal was filed which has been dismissed without considering the materials on record by the impugned order dated 5.2.2024. He submits that at the time of transaction selling

dealer was registered and he has filed its return GSTR-I and GSTR-3B. He submit once GSTR-1 is filed, GSTR-2A auto generates which open window for filing of GSTR 3B. The purchaser can only view that tax have been paid and deposit with Department.

7. Once the tax have been paid by the selling dealer there is full compliance of Section 16 of the GST Act. He further submits Section 16 contemplates that ITC can only be claimed after payment of due tax by the seller. He submits that in the case in hand there is no dispute that the tax has not been deposited by the selling dealer of the petitioner i.e. Mohan Enterprises. Once there is no dispute of the fact that the tax has been deposited, the present proceedings initiated against the petitioner are bad and liable to be set aside.

8. He further submits that even assuming without admitting that the selling dealer registration has been cancelled subsequently to the transaction, no adverse view can be taken against the petitioner. In support of his contention he relies upon the judgment of this Court in case of **M/s Khurja Scrap Trading Company vs. Additional Commissioner Grade-2 (Appeal) & another.**

9. He further submits that the Apex Court recently in the case of The Commissioner Trade and Tax Delhi vs. M/s Shakti Kiran India (P) Ltd has held that if the selling dealer was a registered dealer at the time of transaction and subsequently found that the registration has been cancelled, no adverse view can be drawn against the purchaser. Similar view has been taken by this Court in the case of Solvi Enterprises vs. Additional Commissioner Grade-2 (2025) 29 Centax 22 (All.)).

10. Per contra, learned Standing Counsel supports the impugned order that the proceedings has rightly been initiated against the petitioner as the petitioner has failed to prove any cogent material that the goods have been purchased from the registered dealer and there was actual movement of goods. He submits that the

burden of proving the actual movement of goods from the place is on selling dealer and in the absence thereof the claim of ITC has rightly been reversed. In support of his submission he relies upon the judgment of the Apex Court in the case of The State of Karnataka Vs. M/s Ecom Bill Coffee Trading Pvt. Ltd.(Civil Appeal No. 230 of 2023) decided on 13th March, 2023. He submits that the petitioner has to prove beyond doubt that the goods have actually moved for claiming any exemption or deduction or ITC. In support of his contention he further relies upon the judgment of this Court in the case of Commissioner of Trade Tax Vs. Ramwas Food Ltd.

11. After hearing learned counsel for the parties, the court has perused the record.

12. The record shows that the petitioner has shown its purchases from a registered dealer, namely, Mohan Enterprises who was registered at the time of the transaction. The record further shows seller has filed its return till 2021 both GSTR-1 and GSTR3B but for the supply made to the petitioner, payment of tax have been made and deposited with the department. Further, record shows that the petitioners have made the payment through banking channel. It is no body's case that at the time of transaction, the petitioner and its supplier were not registered but on subsequent dates to the transaction, the registration of the supplier was cancelled. Under the GST Act the authorities are empowered to cancel the registration from the date of inception i.e. the date of registration but the authorities in their wisdom have cancelled the registration of the seller on a subsequent date i.e. after the date of transaction.

13. The record shows that the supplier has filed GSTR-1 and GSTR-3B. It is the matter of common knowledge that after filing GSTR-1, an auto operating window opens for filing GSTR-3B for payment of tax and GSTR-2A can be viewed by the purchaser of the goods in question. Once the said form was generated and the said facts have not been disputed by any of the authorities while

passing the impugned orders, the authorities have failed to consider the fact that GSTR-3B and GSTR-2A, as prescribed under the Act, which was auto populated to which not a single word has been whispered in the impugned orders. Contrary, an observation has been made against the petitioner that has failed to bring on record any cogent material that the seller has deposited the tax is against the record.

14. This Court in the case of Solvi Enterprises (supra) has categorically held that the proceedings under Section 74 of the GST Act can be initiated against the dealer if ITC has wrongly been availed or utilized by reason of fraud or willful wrong statement of facts or by means of fraud and upon adjudication can recover the same but the case in hand is not such.

15. Further, the Apex Court recently in the case of Shakti Karan India Ltd. on 9th October, 2025 has categorically held that on the date of transaction the selling dealer was registered. Neither the transaction nor the invoice in question can be doubted and ITC should have been granted. Similarly, in the case of M/s Safecon Lifescience Pvt. Ltd. vs. Additional Commissioner Grade 2 and another [Writ Tax No. 389 of 2023] this Court has taken the similar view. Further the judgment relied upon by the revenue is not of any aid as the case in hand, all the documents were on record. Moreover, the payment of tax made by the petitioner to its selling dealer have already been deposited with the revenue and the same has not been disputed at any stage.

16. In view of the aforesaid law laid down by the Apex Court, the impugned order cannot be sustained and are hereby quashed.

17. The petition is Allowed.

(Piyush Agrawal,J.)

December 3, 2025
Kumar Manish