



Citation no.2022 (5) GSTPanacea 351 HC Allahabad

Court No. - 21

Neutral Citation No. - 2022:AHC-LKO:25333

Case :- WRIT TAX No. - 83 of 2022

Petitioner :- M/S. Ram Singh Work Contractor, Faizabad Thru.
Its Proprietor Ram Singh

Respondent :- Addl. Commissioner, Grade-2, Commercial Tax
And Another

Counsel for Petitioner :- Manoj Kumar Mishra, Piyush Tripathi

Counsel for Respondent :- C.S.C.

Hon'ble Abdul Moin, J.

Heard.

Instant petition has been filed praying for the following main reliefs:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 29.03.2022 passed by opposite party no. 2 i.e. Additional Commissioner Grade 2 Commercial Tax, Ayodhya in Appeal No. 55 of 2021 U.P Goods and Service Tax Rules, 2017 Rule 9(4) year 2021-2022, in the interest of justice contained as ANNEXURE NO.1 to this writ petition.

(ii) Issue a writ, order or direction in the nature of Mandamus Commanding and directing the opposite parties especially opposite party no. 2 to take GST of Rs. 22,24,617- in easy monthly installment i.e. EMI for three financial year 2018-2019, 2019-2020, 2020-2021, in the interest of justice.

(iii) Issue a writ, order or direction in the nature of Mandamus Commanding and directing the opposite party no. 1 to revoke the cancellation of the GST Registration of the petitioner, in the interest of justice.

(iv) Issue a writ, order or direction in the nature of Mandamus commanding and directing the opposite parties not to take any coercive action against the petitioner during the pendency of the present writ petition, the interest of justice."

The facts of the case have already been set forth in order dated 29.04.2022, which, for the sake of convenience, is reproduced below:-

"Heard learned counsel for the petitioner and learned Additional Chief Standing Counsel appearing for the State-respondents.

The contention of learned counsel for the petitioner is that earlier he has approached this Court by filing Writ Tax No. 8 of 2022 in re: M/S Ram Singh Work Contractor vs Additional Commissioner, Grade-2 against the assessed amount of Rs 28,43,278/-. The said petition has been disposed of vide judgement and order dated 24.01.2022, a copy of which is annexure 9 to the petition, directing the appellate authority to decide the pending appeal expeditiously. It was also provided that in case the petitioner makes workable proposal for the purpose of deposit of GST before the appellate authority the same shall be considered while deciding the pending appeal. The petitioner was also required to deposit 20% of the outstanding liability within 15 days.

It is contended that the appellate authority has rejected the appeal filed by the petitioner vide impugned order dated 29.03.2022, a copy of which is annexure 1 to the petition, on two grounds namely (a) the petitioner did not deposit 20% amount as directed by the High Court within 15 days and (b) the workable proposal given by the petitioner was for a period of 5 years.

Addressing the same, learned counsel for the petitioner contends that (a) in pursuance to the directions issued by the High Court 20% amount was deposited vide challans dated 04.02.2022 and 07.04.2022, copies of which are part of annexure 10 to the petition and thus were deposited within the period of 15 days and (b) that the petitioner has specifically averred in paragraph 24 that the petitioner is willing to deposit the amount as per the provision of section 80 of the GST Act 2017 in 24 installments.

Learned Additional Chief standing Counsel prays for and is granted a weeks' time to seek instructions in this regard.

List this case in the next week as fresh."

Today, learned Standing Counsel on the basis of instructions submits that (a) the petitioner was required by the Division Bench of this Court vide order dated 24.01.2022 to deposit the amount within 15 days. He submits that though the amount was deposited by the petitioner on 04.02.2022 in his own account yet the department could only get the said amount on 19.02.2022 and as such it is apparent that the order of the Division Bench was not complied with, and (b) that as per the relevant provisions of the U.P. Goods and Sales Tax Act, 2017 (hereinafter referred to as the 'GST Act'), the amount is to be paid within 24 installments while the petitioner had prayed for deposit of the amount in 60 installments, which was legally

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unsustainable and therefore the appellate authority has rejected
the appeal of the petitioner.

On the other hand, learned counsel for the petitioner contends that the judgment of the Division Bench was duly informed to the competent authority by means of the application dated 31.01.2022, a copy of which is Annexure-10 to the petition, whereby it was also indicated that the petitioner is in the process of depositing the amount. The amount was deposited vide challan dated 04.02.2022, a copy of which is part of Annexure-10 to the writ petition. However, as the GST registration of the petitioner stood cancelled, it was the duty of the respondents to have taken the said amount from the petitioner's account more particularly when they proceeded to do so subsequently on 19.02.2022. Thus, the fact of the matter would remain that the respondents are in receipt of the entire amount as was required to be deposited by the petitioner in pursuance to the order passed by the Division Bench.

So far as the ground of having filed an application for deposit of the amount in 60 installments, it is contended that the same was on account of error on the part of the counsel who was appearing before the authorities and as such for an error on the part of the counsel the registration of GST of the petitioner should not be discontinued.

Learned counsel for the petitioner also fairly submits that in this regard he would be willing to file an application under the provisions of Rule 23 of the U.P. Goods and Sales Tax Rules, 2017 as well as file an application under Section 80 of the GST Act for deposit of the balance amount in 24 installments but prays that the said applications be decided at the earliest as the business of the petitioner is suffering on account of cancellation of the registration.

Learned counsel for the petitioner while placing reliance on the Division Bench judgment of this Court dated 24.01.2022, a copy of which is Annexure-9 to the petition, contends that even the intention of the Division Bench of this Court was for the authorities to proceed expeditiously so that the business of the petitioner may not suffer more particularly when the entire country is suffering from the effect of COVID-19 pandemic. He also submits that a further amount of Rs.50,000/- had also been deposited by the petitioner on 07.04.2022, which fact is also admitted by the learned Additional Chief Standing Counsel.

Considering the aforesaid and the fact that the Division Bench of this Court vide judgment and order dated 24.01.2022 has already interfered in the matter and admittedly the petitioner

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has also deposited the amount on 04.02.2022 as was required to be deposited which admittedly has been received by the Department on 19.02.2022 as per the statement given by the learned Additional Chief Standing Counsel on the basis of instructions and the fact that in terms of Section 80 of the GST Act the application for 24 installments was to be moved, present petition is **disposed of** leaving it open to the petitioner to file an application under the provisions of Section 80 of the GST Act and Rule 23 of the GST Rules within three days from today. In case the said applications are filed then the same shall be considered expeditiously within two weeks from the date of receipt of the said applications along with certified copy of this order.

Order Date :- 13.5.2022

A. Katiyar