

Court No. - 8

Case :- WRIT TAX No. - 174 of 2023

Petitioner :- M/S Santosh Traders Thru Proprietor
Santosh Kumar Gonda

Respondent :- State Of U.P. Thru. Prin. Secy (Tax
And Registration) Lko And 2 Others

Counsel for Petitioner :- Sachin Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the parties and perused the material brought on record.

2. The present petition has been filed by the petitioner challenging the order dated 14.07.2021 passed against the petitioner, whereby demand has been quantified and imposed against the petitioner as disclosed in the said order for the period April 2018 to March 2019 in respect of SGST and CGST respectively along with tax and penalty imposed upon the petitioner as well as the order 26.12.2022 whereby the appeal preferred by the petitioner has been dismissed on the ground of the same being beyond the prescribed period of limitation prescribed under Section 107 of the GST Act.

3. The contention of the petitioner is that the

petitioner was served a show cause notice under Section 74 of the GST Act recording that it has come to the knowledge of the authority issuing a notice that the tax was not being paid or short paid or the refund has been released erroneously and the petitioner called upon to furnish a reply and submit evidence in support of the claim.

4. From the documents produced by the respondents in pursuance of the order passed by this Court, it transpires that the date by which the reply was to be submitted was fixed as 12.03.2021, however no date or time of personal hearing was specified in the said notice. From the record it appears that the demand details were also mentioned in the said show cause notice. It also transpires from the record that the petitioner appeared on 18.03.2021 and sought further time to file the reply. Thereafter, without passing any order on the said application, the order came to be passed on 14.07.2021, whereby the demand as proposed in the show cause notice was confirmed against the petitioner. The petitioner preferred an appeal against the said order, the same was delayed and was dismissed.

5. Learned counsel for the petitioner argues that the demand pertains to the Financial Year 2018-2019, which has been quantified and fixed against the petitioner along with penalty and interest. He further argues that prior to the notice in question under Section 74 of the GST Act, a notice was issued under Section 61 of the GST Act on 20.05.2019 indicating that the petitioner had not disclosed certain amount while furnishing his return. In the said notice also, no date of personal hearing was fixed. The submission of the learned counsel for the petitioner is that both the orders impugned are liable to be quashed as they are against the principle of natural justice. He further argues that Section 73 of the GST Act empowers the department to take steps for determining the duty payable within the prescribed limitation, however, Section 74 of the GST Act confers the powers upon the department to issue notice and recover the same after a prescribed period of limitation subject to department alleging that the duty was not paid on account of fraud, collusion and mis-statement. Thus for invoking the provision of Section 74 of the GST Act, it is incumbent the

the conditions prescribed under Section 74 of the Act have to exist. He places reliance on Section 74(3) of the GST Act, he also emphasis on the mandate of Section 75(4) of the GST Act to argue that admittedly no opportunity of hearing was granted and thus the order of assessment was bad in law. He further argues that although the appeal preferred by the petitioner was dismissed as having been filed beyond the prescribed period of limitation, further the fact remains that the order passed against the petitioner is contrary to the mandate of Section 74, Section 74(3) and Section 75(4) of the GST Act and also is in utter violation of principle of nature justice. The facts as argued by the learned counsel for the petitioner are duly corroborated with the material contained in the original file, which was summoned and perused by this Court, which discloses the date on which the show cause notice was issued, the fact that there was no allegation of fraud or mis-presentation on the part of the petitioner, there was no mention as to how the case would file under Section 74 and nor under Section 73 of the GST Act, no opportunity of personal hearing admittedly was

granted to the petitioner which is required in terms of Section 75(4) of the GST Act even if the petitioner had not filed his reply to the show cause notice.

6. Considering the submissions made at the Bar and perusing the original file as produced before this Court, it is clear no opportunity of hearing was granted to the petitioner. It is well settled that this issue is squarely covered by the judgment of this Court in the case of Bharat Mint And Allied Chemicals Versus Commissioner Commercial Tax And 2 Others, wherein this Court had issued directions in paragraph 9, thus the orders passed against the petitioner are contrary to the mandate of Section 75 of the GST Act and also the judgment of this Court in the case of Bharat Mint and Allied Chemicals (Supra), as such, the impugned order dated 14.07.2021 can not be sustained and the same is against the principle of natural justice, as such, the same is quashed. The respondent authority would be at liberty to pass a fresh order in accordance with law after giving opportunity of hearing to the concerned parties.

Citation No. 2023 (08) GSTPanacea 105 HC Allahabad

In the result, the writ petition is ***allowed.***

Order Date :- 28.8.2023

Arun