

Neutral Citation No. - 2023:AHC:99857-DB

Chief Justice's Court**Case :-** WRIT TAX No. - 287 of 2023**Petitioner :-** M/S Rising India**Respondent :-** Commissioner Commercial Taxes And 2 Others**Counsel for Petitioner :-** Pooja Talwar**Counsel for Respondent :-** C.S.C.**Hon'ble Pritinker Diwaker, Chief Justice****Hon'ble Saumitra Dayal Singh, J.**

Heard Ms. Pooja Talwar, learned counsel for the petitioner and Sri Ankur Agarwal, learned Standing Counsel for the Revenue.

While writ petition was initially filed for various reliefs including relief against the order passed under Section 74 dated 5.7.2022. By virtue of order dated 19.4.2023 passed in these proceedings, the petitioner has confined his relief to prayer number-D which reads as follows:-

"issue a writ, order or direction in the nature of Certiorari quashing the notice dated 14.02.2023 issued under Section 65 (3) of the U.P. Goods and Services Tax Act, 2017 by the Deputy Commissioner (Tax Audit) State Tax, Jhansi."

Submission of learned counsel for the petitioner is, the petitioner having already been subjected to the proceedings of adjudication under Section 74 of the U.P.G.S.T Act, 2017, the revenue authorities are precluded from exercising jurisdiction under Section 65 of the Act, that too by way of necessary implication.

The writ petition has been opposed by learned Standing Counsel. He would submit, the proceedings under Section 74 had arisen from fact discrepancies noted, which resulted in the order dated 5.7.2022 against which appeal has also been dismissed though on ground of delay. At present, only audit has

been directed and no adverse conclusion has been drawn, therefore, no legal injury has been caused to the petitioner as may warrant exercise of jurisdiction of this Court under article 226 of the Constitution.

Having heard learned counsel for the parties and having perused the record, insofar as, there is no material shown to exist that any earlier audit had been permitted or directed under Section 65 of the Act and insofar as plain reading of the provisions do not suggest any bar in exercise of that power, if the assessee had faced any earlier proceedings under Section 74 of the Act with respect to Input Tax Credit, excess claimed, there is no inherent legal infirmity shown to exist in the audit having been directed, keeping in mind the language of the statute.

As to facts, nothing has been pleaded as may lead this Court to a conclusion that the audit directed is either not permissible or is not warranted, either in view of earlier proceedings suffered by the petitioner under Section 74 of the Act, or otherwise. Plainly facts pleadings to assail the audit (as directed), are missing.

In view of the above, no good ground is made out to offer any interference in exercise of extra ordinary jurisdiction under article 226 of the Constitution as that jurisdiction may be exercised if a legal injury is shown to exist, that too caused contrary to the provisions of law.

The petition is disposed of.

Order Date :- 3.5.2023

Shiraz

(S.D. Singh, J.)

(Pritinker Diwaker, C.J.)