

Chief Justice's Court

Case :- WRIT TAX No. - 1106 of 2023

Petitioner :- M/S Shree Krishna Traders

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Pritinker Diwaker, Chief Justice

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri Ankur Agarwal, learned counsel appearing for the respondent-Revenue.

2. Challenge in this writ petition is to the proceedings initiated under Section 74 of the U.P. GST/CGST Act by respondent no.2 consequent to the notice dated 24.12.2022 for the financial year 2017-18 co-responding to tax period July, 2017 to March, 2018. Further prayer for quashing of the impugned order dated 26.7.2023 passed under Section 74 of the U.P. GST/CGST Act for the financial year 2017-18 has been sought.

3. Learned counsel for the petitioner has invited attention of this Court to a circular dated 2.1.2023 with regard to the input tax availed in the form of GSTR-3B and has placed reliance on paragraph 3(d) to demonstrate that where the supplier has filed Form GSTR-1 as well as return in the Form of GSTR-3B for the tax period, but he has declared the supply with wrong GSTIN of the recipient in the Form of GSTR-1. In such cases, the difference in ITC claimed by the registered person in his return in Form of GSTR-3B and that available in Form GSTR-2A may be handled by following the procedure provided in para 4 of the circular. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their Form GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

4. Learned counsel for the petitioner further submits that the authority was required to follow certain procedure as laid down in paragraph 4 of the circular. He further submits that the impugned order though mentions the aforesaid circular, but the benefit under the said circular has not been extended to the petitioner. He submits that the impugned order may be set aside and the matter may be remitted to the authority concerned for decision afresh.

5. Sri Ankur Agarwal has no objection to the aforesaid proposition and submits that the matter may be remitted to the authority concerned for decision afresh.

6. In view of the fair statement made by Sri Ankur Agarwal, the impugned order dated 26.7.2023 is, *hereby*, set aside. The matter is remitted back to respondent no.2 to pass fresh orders within a period of one month from today, taking into consideration the circular as well as any other material relied upon by the petitioner in support of its case.

7. With the aforesaid observation, the writ petition is **disposed of**.

Order Date:- 25.9.2023

CS/-

(Ashutosh Srivastava, J.) (Pritinker Diwaker, C.J.)