

Neutral Citation No. - 2023:AHC:212496

**Reserved**

**Court No. - 5**

**Case :-** WRIT TAX No. - 909 of 2022

**Petitioner :-** M/S Rama Brick Field

**Respondent :-** Additional Commissioner Grade-2 And 2 Others

**Counsel for Petitioner :-** Suyash Agarwal

**Counsel for Respondent :-** C.S.C.

**HON'BLE PIYUSH AGRAWAL, J.**

1. Heard Mr. Suyash Agarwal for the petitioner and Mr. Rishi Kumar, learned A.C.S.C. for State-respondents.
2. The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.
3. By means of this writ petition, the petitioner is assailing the order dated 15.7.2020 under Section 74 of the Act relating to period of May 2018 to June 2018 for A.Y. 2018-19 and the order dated 20.7.2021 passed by Commercial Tax Officer Sardhana, Sector Meerut, respondent no. 2 as well as order dated 26.10.2021 passed by Additional Commissioner, Grade -2 (Appeal) II, Commercial Tax, Meerut A.Y. 2018-19, under Section 74 /161 of UP GST Act.
4. Learned counsel for the petitioner has submitted that during period of 1.10.2017 to 21.3.2019 compounding was filed which has been accepted; once compounding has been accepted the petitioner cannot claim the benefit of input tax credit. He submitted that the petitioner in the normal course of business purchases various materials for which due tax invoices were issued and after payment of tax, the goods were received; during the assessment period in question purchase of coal was made from Rohit Coal Traders for which tax invoice was issued in which CGST and SGST was charged as well

as GST composition cess was also charged; on the said purchases even after payment of tax, no input tax credit was availed by the petitioner on the ground that the petitioner has opted for composition. But the proceedings under Section 74 was initiated and a notice was issued on 13.7.2020 on the ground that Rohit Coal Traders was not found to be in existence and thereafter the order was passed on 15.7.2020 imposition of tax and penalty of Rs. 200235/- and accordingly the demand was raised; against the said order a rectification application under Section 161 was filed but by order dated 20.7.2020 no relief was granted to the petitioner; against the said order, an appeal was preferred which was also rejected by the impugned order dated 26.10.2021.

5. Learned counsel for the petitioner submitted that the purchaser as well as selling dealer i.e. Rohit Coal Traders have filed their returns in GSTR -1 and GSTR 3 B. It is further argued that merely because Rohit Coal Traders was found non-existent at the time of survey, could not led to any action against the petitioner as the petitioner has opted for composition and no input tax credit is being availed by the petitioner. He further submitted that observation of the authorities below is perverse with regard to the observation made that Rohit Coal Trader has not paid the legitimate tax are concerned, Rohit Coal Trader has filed GSTR-1 and GSTR 3 B which could not be submitted without payment of tax. He prays for allowing the writ petition .

6. *Per contra*, Mr. Rishi Kumar, learned A.C.S.C. has supported the impugned orders and submitted that it is not in dispute that the petitioner has opted for compounding but merely opting for composition will not prohibit the respondents for initiating the proceedings under Section 74 of the Act. He further submitted that purchases have been shown by the petitioner from Rohit Coal Traders and at the time of survey the aforesaid firm was non-existence, meaning thereby the purchases shown by the petitioner are bogus. He submitted that the legitimate tax which should be received by the State from the said purchases, have not been deposited and as such the proceedings are justified. He further submitted that the authorities have clearly and categorically observed that the petitioner has failed to discharge the burden with regard to deposit of tax on the

alleged purchases being made from Rohit Coal Traders. He prays for dismissing the writ petition.

7. After hearing learned counsel for the petitioner, the Court has perused the records.

8. It is not in dispute that the petitioner has opted for compounding which has been accepted by the respondent authorities for a period of 1.10.2017 to 21.3.2019. The disputed purchase as shown by the petitioner from Rohit Coal Trader pertains to May 2018 to June 2018, which falls under the aforesaid period of composition. The petitioner in support of his contention has adduced evidence such as tax invoice, e-way bill, G.R., payment receipts etc. to show that the purchases have been made from the registered dealer. It is also admitted that the registration of Rohit Coal Traders has been cancelled vide order dated 24.10.2019 in other words at the time of transaction in question, the seller i.e. Rohit Coal Traders was registered firm under the G.S.T. Act. It has been argued on behalf of petitioner that Rohit Coal Traders has filed his return for A.Y. 2018-19 ie. GSTR-1 and GSTR-3B. It is a matter of common knowledge that after filing of GSTR -1, an auto pop up window would be opened for filing of Form GSTR 3 B for payment of tax and form GSTR 2 A can be viewed by the purchaser of goods in question. Once the said form was generated and the said fact has not been disputed by the authorities below while passing of the impugned order, which goes without saying that at the time of transaction, purchaser and supplier both were registered. However at the subsequent time if the seller i.e. Rohit Coal Trader was found non- existence, the proceeding can be initiated but the authorities has failed to consider the fact that GSTR returns as prescribed under the Act was filed by the seller to which not a single word has been whispered while passing the impugned order. On the contrary an observation has been made that the petitioner has failed to bring on record any cogent material to show that Rohit Coal Traders has deposited the tax and therefore proceedings were held to be justified.

9. Under the GST regime all details are available in the portal of GST department. The authorities could have very well verified as to whether after

filing of GSTR-1 and GSTR 3 B how much tax has been deposited by the selling dealer i.e. Rohit Coal Traders but the authorities have failed to do so. Thus looking to the said facts, the impugned orders cannot be sustained in the eyes of law.

**10.** In view of the facts as stated above, the writ petition succeeds and is **allowed**. The impugned orders are set aside. The matter is remanded to the first appellate authority, who shall pass a fresh order in accordance with law, expeditiously, preferably within a period of two months from the date of producing a certified copy of this order, without granting any unnecessary adjournment to the parties.

**11.** The petitioner is directed to file a certified copy of this order before the 1<sup>st</sup> appellate authority within three weeks from today.

**Order Date :- 6.11.2023**

Rahul Dwivedi/-