

Court No. - 47 Neutral Citation No. - 2023:AHC:104841-DB

Case :- WRIT TAX No. - 336 of 2023

Petitioner :- M/S Nagarjuna Agro Chemicals Pvt. Ltd.

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Vinod Diwakar,J.

Short question which is raised in the present petition is as to whether the department is enjoined to issue a notice under sub-section 3 of Section 61 of Central Goods and Service Tax Act, 2017 once returns have been submitted by the assessee before initiating action under Section 74 of the Act or not ?

The petitioner is an assessee under the GST regime and has submitted returns for the assessment year 2019-20. The department apparently has not initiated any action referable to Section 61 of the Act. It transpires that the proceedings under Section 74 have been initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods. The department has examined the issue and ultimately passed the order impugned whereby the tax previously paid was found short and a demand has been raised for deposit of appropriate short fall in the deposit of tax as also interest and penalty.

Learned counsel for the petitioner submits that since returns had been submitted by the petitioner for the period in question, therefore, the appropriate course open for the department was to have pointed out deficiency in the returns submitted by the petitioner so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act.

Section 61 of the Act, 2017 reads as under:-

"(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

Sub-Section (2): In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

Sub-Section (3): In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the

corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74."

Section 61 regulates scrutiny of returns. In the process of scrutiny of such returns the proper officer has been vested the jurisdiction to examine the return and in case any discrepancies are noticed therein the proper officer can intimate such discrepancy to the assessee with the object of conferring an opportunity upon the assessee to rectify such discrepancy. The discrepancy may be of different kinds. The proper officer is also vested with jurisdiction under Section 61 to proceed with issuance of notice against the assessee where the deficiency pointed out by the department is not rectified and no satisfactory explanation is furnished in that regard. The exigency, which is dealt with under Section 61 is therefore, quite distinct and is confined to the scrutiny of returns.

In the present case it does not appear that any discrepancy was noticed by the department in the returns of the petitioner nor any such deficiency was pointed out to the assessee for it to be rectified by it. The returns, therefore, remain intact. It is later at the stage of consideration of the return that the department has found that proper tax has not been deposited and consequently proceedings under Section 74 has been initiated and concluded against the petitioner. In the statutory scheme the course followed by the department would clearly be permissible in law. The argument that unless deficiency in return is pointed out to the assessee, and an opportunity is given to rectify such deficiency, that the department can proceed under Section 74 is not borne out from the statutory scheme and the argument in that regard therefore, must fail.

The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.

So far as the judgment relied upon by the counsel for the petitioner in the case of M/S Vadivel Pyrotech Private Ltd. vs. The Assistant Commissioner, (2022 U.P.T.C. 1769), we find that the observations of learned single judge of Madras High Court therein is in the facts of that case and do not lay down any proposition of law which restricts the exercise of jurisdiction under Section 74 upon issuance of notice under Section 61(3) of the Act.

In our view, merely because no notices were issued under

Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 as exercise of such power is not dependent upon issuance of notice under Section 61. The argument is misconceived is thus, repelled.

In the facts of the case, we find that the petitioner has a remedy of preferring appeal which has not been availed. Various facts are asserted during the course of hearing to highlight the incapacity of the petitioner due to which the appeal could not be filed earlier.

In the facts of the case, we therefore, permit the petitioner to prefer such appeal within two weeks from today and in the event such an appeal is filed, the same shall be entertained without raising any objection with regard to limitation.

Subject to the observations made above, this petition is dismissed.

Order Date :- 15.5.2023

Anil