

Court No. - 8

Case :- WRIT TAX No. - 167 of 2023

Petitioner :- M/S Sumit Enterprises Office At Badel Nawabganj
Barabanki Thru. Proprietor Atul Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Ministry Of Finance Lko.
And 2 Others

Counsel for Petitioner :- Anurag Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard Shri Pranjal Shukla, learned counsel for the petitioner, learned Standing Counsel and perused the records produced by learned Standing Counsel in terms of the order passed by this Court on 03.10.2023.

2. By means of the present petition, the petitioner has challenged the order dated 29.03.2023 whereby the appeal preferred by the petitioner under Section 107 of GST Act was dismissed as being beyond limitation.

The petitioner has also challenged the order dated 15.03.2022 passed by respondent no.3 whereby a demand has been created under Section of 74 of GST Act.

3. Submission of learned counsel for the petitioner is that the petitioner is a bonafide firm doing its business in accordance with law and had by mistake availed ITC but the same was not utilized. As the mistake was bonafide, the petitioner filed corrected return in the month of July, 2019. It is stated that despite the said, a notice was served under Section 74 of GST Act on 25.06.2021 wherein a proposed liability of Rs.1,48,160/- was sought to be levied and collected from the petitioner. The said show-cause notice also was based upon a survey conducted on 27.04.2019.

4. It is stated that after the issuance of show-cause notice, the petitioner moved an application seeking adjournment on the ground that his advocate was unwell and thus, time be granted to file a reply to the show-cause notice. The petitioner also prayed for grant of a personal hearing.

5. From the record, it appears that two notices were sent to the petitioner thereafter on 17.09.2021 and 13.12.2021 which were named as reminder notices. As the petitioner did not file a reply, an order came to be passed on 15.03.2022 without providing an opportunity of hearing in terms of the mandate of Section 75(4) of the GST Act. The petitioner preferred an appeal against the said order, which was dismissed on the ground of being beyond

the prescribed period of limitation.

6. Contention of learned counsel for the petitioner is that the petitioner has challenged both the orders i.e. the order passed under Section 74 of GST Act as well as the order-in-appeal, however, he lays emphasis in challenging the original order whereby the demand under Section 74 of GST was confirmed, however, without providing for an opportunity of hearing.

7. From the records as produced by learned Standing Counsel, in the notice issued under Section 74 of GST Act, the date by which the reply was to be submitted was mentioned as 26.07.2021, however, date of personal hearing, time of personal hearing and venue of personal hearing were not indicated and simply the word "NA" was transcribed. Even in the reminder notice sent to the petitioner, in the column of date of personal hearing, time of personal hearing and venue of personal hearing, "NA" was transcribed.

8. Learned Standing Counsel, based upon instructions, states that no personal hearing was granted, which is also evident from the order impugned.

9. Section 75(4) of the GST Act mandates the granting of an opportunity of hearing where an adverse decision is contemplated against a person. This provision was also interpreted by this Court in the case of ***Party Time Hospitality Prop. Smt. Punita Gupta Lko. v. State Of U.P. & 2 Others (Writ Tax No.176 of 2023)*** decided on **28.08.2023** and the Court was of the view that compliance of Section 75(4) of GST Act is mandatory; while doing so, this Court had also considered the earlier judgments of this Court.

10. Considering the fact that the original order is contrary to the mandate of Section 75(4) of GST Act and is also violative of principles of natural justice, the order dated 15.03.2022 is liable to be quashed and is accordingly quashed.

11. As the impugned order has been quashed, order dated 29.03.2023 is also quashed.

12. Matter is remanded to respondent no.3 to pass fresh orders after giving an opportunity of hearing and after permitting the petitioner to file a reply to the show-cause notice, in accordance with law.

13. The petition is ***allowed*** in above terms.

Order Date :- 9.10.2023

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