

Court No. - 8

Case :- WRIT TAX No. - 191 of 2023

Petitioner :- M/S Ramji Kirana Store Thru. Proprietor Ramji

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Commercial Tax Deptt. Lucknow And 2 Others

Counsel for Petitioner :- Amit Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Amendment application filed today in Court is taken on record.
2. Heard learned counsel for the petitioner and learned Standing Counsel for the State.
3. Present petition has been filed challenging the order dated 20.02.2023 passed in exercise of powers under Section 73 of GST Act as well as the order dated 31.07.2023 whereby the appeal preferred by the petitioner was dismissed.
4. Vide order dated 03.10.2023, learned counsel for the respondent/State was directed to produce the records to ascertain as to whether any hearing was granted to the petitioner during the assessment proceedings and during the appellate proceedings or not. The records have been produced, which are perused.
5. On the basis of the averments made in the writ petition as well as on perusal of the records, it is revealed that the petitioner who is registered under the GST Act was called upon by means of a notice issued under Section 73 of the GST Act read with Rule 142(5) of the GST Rules to file a reply to the allegations levelled. Thereafter, a reminder notice was also sent to the petitioner on 02.10.2022. In the reminder notice, the date by which the reply was to be submitted was mentioned as 05.12.2022, however, in the columns next to date of personal hearing, time of personal hearing and venue of personal hearing, the word "NA" was transcribed. Subsequently, without granting any hearing as is also clear from the order, an order came to be passed against the petitioner on 20.02.2023. The said order was challenged by the petitioner by filing an appeal, although with a delay. The petitioner had also deposited 10% of the amount. The delay application filed by the petitioner came to be dismissed by means of an order dated 31.07.2023. The gist of the order is contained in Annexure - 1, however, there is no order either in the original record or with the petition to

demonstrate that there was any application of mind on the delay condonation application filed by the petitioner.

6. In the light of the said facts, submission of counsel for the petitioner is that in terms of mandate of Section 75(4) of GST Act, it is incumbent upon the respondents to grant a hearing, which admittedly has not been granted, as the date, venue or time of hearing was not mentioned in the reminder notice sent to the petitioner and thus, the order contained in Annxure - 2 passed under Section 73 of GST Act is clearly in violation of principles of natural justice.

7. As against the appellate order, learned counsel for the petitioner argues that the same is also without consideration or application of mind. He places reliance on a judgment of the Supreme Court in the case of *Kajal Dutta v. Assistant Commissioner of Sate Tax, Suri Charge & Ors.; M.A.T. No.1924 of 2022* decided on **20.01.2023** wherein the Supreme Court had the occasion to consider the statutory provisions governing the limitation under Section 107(1) read with 107(4) of GST Act and the Court was of the view that even in the cases where the appeal is filed beyond the condonable period, the Court while exercising the jurisdiction under Article 226 of the Constitution of India can examine the factual circumstances and grant appropriate relief as the appellate remedy is a valuable remedy since an appellate authority can re-appreciate the factual position.

8. In the light of the said judgment, learned counsel for the petitioner argues that the delay in filing the appeal which was on justifiable grounds, ought to be condoned.

9. In view of the submissions made and recorded above and on perusal of the records, I am of the view that the original order suffers from the vice of not following the mandatory provisions under Section 75(4) of GST Act and thus, is clearly contrary to the mandate cast by virtue of Section 75(4) of GST Act and is also in violation of principles of natural justice, thus, I deem it appropriate to quash both the orders contained in Annexure - 1 & 2 i.e. 20.02.2023 & 31.07.2023 and remand the matter to the assessing authority to pass fresh orders after giving an opportunity of hearing to the petitioner. Ordered accordingly.

10. The writ petition is **allowed** in above terms.

11. The record is handed over to learned Standing Counsel.

Order Date :- 11.10.2023
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