

Court No. - 1

Case :- WRIT TAX No. - 554 of 2023

Petitioner :- M/S Excellentvision Technical Academy Pvt. Ltd.

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Aditya Pandey, Bipin Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf, J.

1. The instant writ petition under Article 226 of the Constitution of India challenges the search and seizure order dated January 4, 2018, the subsequent proceedings wherein the notice was issued on February 8, 2021 and the order dated September 1, 2021 passed under Section 74 of the Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). The writ petition also challenges the order passed in appeal dated January 6, 2023.

2. The main thrust of the petitioner in the writ petition is that the respondent authorities never complied with the mandatory provision of Section 67 of the Act, as the Joint Commissioner, while granting the authorization for search and seizure, never put forth the reasons to believe that the search was necessary.

3. Upon a perusal of the documents, one finds that the search was carried out on January 4, 2018, however there are two INS-01, which have been issued on two different dates; one on February 11, 2019 and another on January 4, 2018 (date of the search). It becomes clear that the INS-01 issued on February 11, 2019 is subsequent to the search and is, therefore, an invalid document. With regard to other INS-01 that has been issued on the date of search, it further appears that no reasons to believe have been noted in the same. In fact, this document was provided to the petitioner upon the petitioner making an application. This document appears to be fabricated and created as an afterthought.

4. The petitioner raised this point in paragraph Nos.41 and 42 of the instant writ petition. The same are delineated below:

"41. That since there are two INS-01 issued on different dates, it itself doubt the genuineness of the authorization to the proper officer to conduct the inspection, search and seizure.

42. That from the perusal of both the INS-01 it is very clear that no reasons to believe has been recorded or formed by the Joint Commissioner SIB to initiate the proceedings against the petitioner under section 67 which is mandatory requirement to initiate the proceedings against the petitioner under section 67, therefore, the proceedings initiated under section 67 is totally illegal and liable to be set aside as well as the consequential proceedings are liable to be dismissed."

5. In paragraph 38 of the counter affidavit, the State authorities dealt with paragraph 41 of the writ petition. The same is delineated below:

"38. That the contents of paragraph no. 41 of the writ petition are not admitted in the manner stated hence denied, in reply thereto, the averments made in paragraph no. 30 of the counter affidavit are reiterated and reaffirmed."

6. Paragraph 38 of the counter affidavit refers to paragraph 30, which is delineated below:

"30. That the contents of paragraph no. 33 of the writ petition are not admitted in the manner stated hence denied, in reply thereto, the averments made in paragraph no. 24 of the counter affidavit are reiterated and reaffirmed."

7. Surprisingly, paragraph 30 also refers to paragraph 24 of the counter affidavit, which is delineated below:

"24. That the contents of paragraph no. 18 of the writ petition are not admitted in the manner stated hence denied, in reply thereto, it is submitted that the common portal provides facility to Petitioner to seek adjournment based on averments. However Petitioner neither utilised such a facility to communicate such averments nor made such averments during the proceedings in any other form (email/letter etc) nor submitted when sought adjournment of proceedings twice through applications dated 22.12.2020 and 19.01.2021 w/s 75(5) of CGST Act. Late: at Para 47 of Petition, the Petitioner averred that due to COVID 19 and other problems the Petitioner was unable to make a reply. Hence such averments are afterthought apparently to mislead this Hon'ble Court because the

firm has more than one Director any direction could have reply to the notice."

8. This attempt of the State authorities in explaining the issue of two INS-01 forms has resulted in a kerfuffle and nothing more. The confusion is writ large in the counter affidavit and no sensible explanation has been provided to put forward the actual reasons to believe as required under Section 67 of the Act. In the present case, the said procedure had not been followed, and accordingly, the entire authorization is vitiated and liable to be quashed.

9. In light of the same, the entire proceedings that have originated from the illegal search and seizure carried out under Section 67 of the Act have no foot to stand on, and accordingly, are quashed and set aside. The State authorities are directed to release all the goods and documents that they may have detained or confiscated within a period of three weeks from date.

10. Any amount deposited by the petitioner in lieu of the order passed under Section 74 of the Act should be refunded to the petitioner within a period of eight weeks from date.

Date :- 20.5.2024

Kuldeep

(Shekhar B. Saraf,J.)