

Court No. - 2

Case :- WRIT TAX No. - 1403 of 2024

Petitioner :- M/S Bhagwan Das Agrahari

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ajay Kumar Yadav,

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

Heard Mr. Ajay Kumar Yadav, learned counsel for the petitioner and Mr. B.K. Pandey, learned ACSC for the State-respondents.

By means of present petition, the petitioner is assailing the order dated 1.5.2024 passed by respondent no. 2 and the order dated 14.3.2023 passed by respondent no. 3.

Learned counsel for the petitioner submits that a very short controversy is involved in the present petition. He submits that proceedings under Section 73 of UP GST Act was initiated against the petitioner on the ground of wrong availment of input tax credit against which an appeal has been filed but the same has also been dismissed without considering the material on record. He submits that a circular has been issued on 27.12.2022 clearly stating therein that in the event the supply is less than 5 lakhs then certificate of supplier will be sufficient for clarifying the position. He submits that in pursuance of the same, the certificate of all the concerned supplies were brought on record and copies of which are also annexed at page nos. 138 to 166 of the writ petition, however, no due weightage of the same, has been given by the respondent authority. He further submits that the respondent authorities have wrongly recorded the fact that GSTN are not mentioned in the certificates, therefore, benefit of input tax credit has been denied.

Per contra, learned ACSC supports the impugned order and submits that the proceedings has rightly been initiated as the petitioner has failed to prove the genuineness of the transactions. He submits that the petitioner has wrongly availed the benefit of input tax credit, which has been rightly denied by the impugned orders.

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

Learned ACSC in the counter affidavit has filed circular dated 27.12.2022 as Annexure no. CA-1. On perusal of the said circular, it clarifies to deal with different input tax credit availed in Form GSTR 3 B as compared to deal with in Form GSTR 2 A, which simplify the process of comparison of the same. Clause 4.1.1 has diluted / clarify / give power for filing of certificate by the supplier / Chartered Accountant with regard to the gaping mentioned therein.

It is not in dispute that the certificates have been filed as per Government Order dated 27.12.2022 and copies of the same have been annexed along with the writ petition, which has not been denied. Once the certificate as per the Government Order was there, which has not been denied, the benefit of the same has been denied on the alleged ground that GSTN have not been mentioned in the certificates. However, on perusal of the certificates annexed along with the writ petition, it appears that GSTN have specifically been mentioned therein. In such circumstances, the matter requires reconsideration by the respondent authority.

In view of peculiar facts and circumstances of the case, the impugned orders are set aside. The matter is remanded to the original authority, who after considering all the materials filed by the petitioner as well as after hearing all the stake holders, shall pass reasoned and speaking order within a period of three months from the date of production of certified copy of this order.

Any amount deposited by the petitioner shall be subject to the outcome of the fresh order passed by the respondent authority.

The petitioner undertakes to serve certified copy of this order before the competent authority within ten days from today.

The writ petition is **allowed** accordingly.

Order Date :- 24.1.2025

Rahul Dwivedi/-