

Court No. - 10

Case :- WRIT TAX No. - 1465 of 2024

Petitioner :- M/S Xestion Advisor Private Limited

Respondent :- Additional Commissioner Grade II and Another

Counsel for Petitioner :- Harsh Vardhan Gupta

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Harsh Vardhan Gupta, learned counsel for the petitioner and learned ACSC for the State - respondents.
2. The instant writ petition has been filed against the impugned order dated 21.09.2020 passed by the respondent no. 2 as well as the impugned order dated 12.06.2024 passed by the respondent no. 1.
3. Learned counsel for the petitioner submits that the petitioner is a Company incorporated under the Companies Act, 1956 and engaged in the business of providing management consultancy services. He further submits that on 21.09.2020, the respondent no. 2 proceeded to pass the assessment order under Form DRC - 07 for non-compliance in filing Form GSTR - 3B under the due date. Thereafter, notice under section 46 of the GST Act was uploaded on the GST portal on 25.09.2020. On 03.12.2020, the petitioner filed return for the month of April, 2020 declaring Nil tax. Against the order dated 21.09.2020, the petitioner preferred an appeal, which has been dismissed vide order dated 12.06.2024.
4. Learned counsel for the petitioner further submits that the notice under section 46 of the GST Act was issued on 25.09.2020 for submitting the return within a period of 15 days to which the tax liability may be assessed under section 62 of the GST Act; whereas, the order dated 21.09.2020 under section 62 of the GST Act had already been passed 4 days prior to issuance of notice. He further submits that the petitioner did not get opportunity to file return within the period prescribed in the notice. The impugned order has been passed in complete defiance of the mandatory requirement of notice under section 46 of the GST Act and therefore, the impugned order suffers from serious infirmity for non-compliance of principles of natural justice and procedural requirement prescribed under the Statute.
5. Per contra, learned ACSC supports the impugned orders.
6. After hearing learned counsel for the parties, the Court has perused the record.
7. The record reveals that admittedly, an order dated 21.09.2020 was passed under section 62 of the GST Act creating demand against the petitioner to the tune of Rs. 19,80,000/-, but the notice under section 46 of the GST Act was issued on

25.09.2020, much after the passing of the order dated 21.09.2020. The record clearly shows that the assessment order under section 62 of the GST Act suffers from serious lacuna due to non-issuance of notice under section 46 of the GST Act. Even the appellate court has failed to taken note of the said fact. Therefore, the impugned orders suffer from serious infirmity for non-compliance of principles of natural justice and procedural requirement prescribed under the Statute in absence of proper service on the petitioner.

8. On an identical set of fact, the High Court of Jharkhand, in **Vinman Constructions Limited Vs. State of Jharkhand** [(2022) 93 GST 119 (Jharkhand)], has held as under:-

"12. The impugned assessment order passed under section 62 of the Act by the Respondent No. 2 suffers from a serious lacuna due to non-issuance of notice under section 62 of the Act. The action of the Respondent had led to blocking of ITC to the tune of Rs. 2.88 crores which has been adjusted against the disputed tax liability of Rs. 3,30,76,800/- imposed under the impugned assessment order. From perusal of the appellate order at Annexure-9, it appears that the Appellate Authority has only taken into consideration that the petitioner had failed to file its return within thirty days of the assessment order in terms of section 62 (2) of the Act and therefore, the assessment order passed by the proper officer to the best of his judgment did not require any interference. Learned Appellate Authority has however failed to take note that the assessment order itself suffers from serious infirmities for non-compliance of principles of natural justice and procedural requirement prescribed under the Act in the absence of proper notice upon the petitioner. The impugned action has led to serious penal consequences which cannot be sustained in view of serious infirmities in the procedure adopted by the Assessing Officer. This Court is, therefore, of the view that the impugned assessment order dated 02.08.2018 passed by the Respondent No. 2 (Annexure-6) as also the Summary of the Order contained in DRC-07 dated 01.10.2018 issued by the Respondent No. 3 deserves to be set aside. Accordingly, they are set aside. For the reasons recorded hereinabove, the appellate order dated 25.01.2020 (Annexure-9) passed by the Joint Commissioner of State Tax (Appeal), Ranchi Division, Ranchi also cannot be sustained in the eye of law. Accordingly, it is set aside. Consequently, ITC of the petitioner amounting to Rs. 2.88 crores lying blocked shall be unblocked.

12.1. As also admitted by the Respondent, petitioner has filed its return for the period in question. It is open for the Respondent to accept the return or undertake proper scrutiny thereof as per law. Learned counsel for the petitioner submits that pre-deposit made before the Appellate Authority may be directed to be released. It is up to the petitioner to approach the Appellate Authority with proper request, which shall be considered in accordance with law."

9. In view of the aforesaid facts & circumstances of the case as well as the decision of the High Court of Jharkhand in **Vinman Constructions Limited** (supra), the impugned order dated 21.09.2020 passed by the respondent no. 2 as well as the impugned order dated 12.06.2024 passed by the respondent no. 1 cannot be sustained in the eyes of law. The same are hereby quashed.

10. The writ petition succeeds and is allowed.

11. The matter is remitted to the respondent no.2/Deputy Commissioner, State Tax, Sector – 8, Noida, Gautam Buddha Nagar to reconsider the matter by issuing a

fresh notice to the petitioner within a period of two weeks from today. The petitioner undertakes to appear before that authority concerned on the next date fixed such that proceedings may be concluded, as expeditiously as possible.

12. Any amount deposited during the pendency of the proceedings, shall be subject to the outcome of the order passed by the Authority concerned.

Order Date :- 9.4.2025

Amit Mishra