Elesh Agrawal v. Union Of India And 2 Others

WRIT TAX No. 753 of 2023 | Decision: 2023-05-31 | Allahabad High Court

Neutral Citation No. - 2023:AHC:121765-DB

Court No. - 42

Case :- WRIT TAX No. - 753 of 2023

Petitioner :- Elesh Agrawal Respondent :- Union Of India And 2 Others Counsel for Petitioner :- Dileep Chandra Mathur Counsel for Respondent :- A.S.G.I.,Dhananjay Awasthi,Gopal Verma

Hon'ble Saumitra Dayal Singh,J. Hon'ble Rajendra Kumar-IV,J.

1. Heard Sri Dileep Chandra Mathur, learned counsel for the petitioner, Sri Dhananjay Awasthi, learned counsel for the revenue and Sri Gopal Verma, learned counsel for the Union of India.

2. Present petition has been filed to challenge demand cum notice to show cause no. 59/2022-23, dated 24.02.2023 issued on Form GST DRC-01 read with Rule 142 (1) of Central GST Act, 2017.

3. Amongst other that notice is issued to the petitioner. Perusal of the same reveals, by means of contents of paragraph-1 and 2 of that notice, the petitioner has been required to show cause with respect to three penalties proposed to be imposed on the petitioner for Rs. 10,50,50,0498/-, under Section 142(1A) and Rs. 25,000/- each under Section 142 (3) (a) and (d), respectively.

4. Submission of learned counsel for the petitioner is, present notice has been issued prematurely, before any regular show cause notice may have been issued in any adjudication proceedings. By virtue of Section 74(5) of the Act, revenue authorities were bound to allow the petitioner opportunity to pay up the alleged defaulted amount together with penalties etc., on self assessed basis. If that amount were to be paid by the assessee, no adjudication proceeding may arise. Here, it has been submitted, clearly, that opportunity has been denied, inasmuch as the show cause notice has been issued on Form GST DRC-01 and not Form GST DRC-01A. The issue is stated to be dealt with squarely by a Division Bench decision of the Gujarat High Court in Agrometal Vendibles Private Limited Vs. State of Gujarat; R/Special Civil Application No. 6919 of 2022, dated 7.4.2022.

5. The other grievance of the petitioner is that above demand cum

notice has not been uploaded on the GST portal and that no notice came to be served on the petitioner through electronic means. Thus, the proceedings are stated to be premature.

6. On the other hand, learned counsel for the revenue would submit, discrepancy in form description apart, the impugned notice does not suffer from any defect, inasmuch as the petitioner is not desirous of availing any opportunity to pay up defaulted amount or any part thereof, on his own. Here, the petitioner is described to have disputed the entire tax liability. Therefore, it has been submitted, adjudication proceedings have become necessary. At present, no real prejudice has been caused to the petitioner for reason of the discrepancy alleged in issuance of show cause notice on Form GST DRC-01 in place of Form GST DRC-01A. Upon further query made, he states, as of now, no adjudication order has been passed.

7. As to the other submission advanced by learned counsel for the petitioner, Sri Awasthi assures the Court that error, if any attributable to the GST authorities, would be rectified within 48 hours such that all information required to be uploaded on the GST portal and required to be communicated to the petitioner through electronic means, would be so uploaded and communicated, in accordance with law. Sri Awasthi further assures that the entire proceedings shall henceforth be carried out after complying with all provision and rules made thereunder.

8. Having heard learned counsel for the parties and perused the record, while it is true that revenue authorities must give reasonable opportunity of hearing in adjudication proceedings, and further preliminary notice may be issued not on Form GST DRC-01 but on Form GST DRC-01A, as that is the prescribed form, at the same time, in the context of the present facts, that objection appears to be hyper technical and not real.

9. On pointed query, Sri Mathur states that in the present case, the petitioner is disputing the entire amount of penalty proposed to be imposed. Clearly, the petitioner does not admit any fact allegations being levelled against him. Therefore, the requirement of preliminary notice has largely been rendered formal. If issuance of such notice would not have served any benefit to the assessee, it

would be futile on the part of the writ-Court to enforce on the revenue authorities fulfilment of that condition, in the present case, at this stage. No real prejudice has been caused to the petitioner.

10. Then, there is a material fact distinction in Agrometal Vendibles Private Limited (supra) and the present case. There, not only the first notice had been issued on Form GST DRC-01 but the authority chose to create a firm demand of tax and penalty. That has been duly extracted in the order of the Gujarat High Court. There exists no doubt as to its absence in the present case. No such firm demand has been created. Recitals contained in the notice clearly indicate, at present, the petitioner has been required to show cause, why such demand may not be created. Mere mention of wrong form number, without anything more, may not be fatal to the proceedings.

11. In view of the above, no good ground is made out to offer any interference on merits, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India. Thus, prayer made in the writ petition is declined.

12. At the same time, to ensure that the interest of justice is met, considering the entirety of the submission advanced by the learned counsel for the petitioner and as prayed by learned counsel for the petitioner, a month's time is granted to the petitioner, to file reply to the show cause notice.

13. Accordingly, the writ petition is disposed of with the direction, the petitioner may file reply to the impugned show cause notice within a period of one month i.e. not later than 30.06.2023.

14. In the meanwhile, the revenue authorities will ensure that all documents required to be uploaded on the GST portal and required to be communicated to the petitioner through electronic mode may be uploaded and communicated within 48 hours. Also, the revenue authorities shall ensure that such communication channels are maintained and all communications pertaining to the pending proceedings are served through electronic mode, and the proceedings are conducted and concluded, in accordance with law.

Order Date :- 31.5.2023 SA

(Rajendra Kumar-IV, J.) (S. D. Singh, J.)

2023-05-31T16:08:50+0530 High Court of Judicature at Allahabad