M/S Santosh Kumar v. Additional Commissioner Grade-2 And Another

WRIT TAX No. 1185 of 2022 | Decision: 2023-10-11 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:199009

Court No. - 5

Case :- WRIT TAX No. - 1185 of 2022

Petitioner :- M/S Santosh Kumar

Respondent :- Additional Commissioner Grade-2 And Another

Counsel for Petitioner :- Bipin Kumar Pandey,Aditya Pandey

Counsel for Respondent :- C.S.C.

With

Case :- WRIT TAX No. - 1193 of 2022

Petitioner :- M/S Santosh Kumar

Respondent :- Additional Commissioner Grade-2 And Another

Counsel for Petitioner :- Bipin Kumar Pandey,Aditya Pandey

Counsel for Respondent :- C.S.C.

HON'BLE PIYUSH AGRAWAL,J.

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and Sri Rishi Kumar learned Standing Counsel for the respondents.

2. Since the issues involved in these two writ petitions are similar, therefore, the same are being decided by the common order.

3. The present writ petitions have been filed assailing the order dated 7.1.2022 passed by the respondent no.1 in GST Appeal Nos.67 of 2020 & 66 of 2020, Assessment Year 2018-19 under the provisions of Section 73 of the UP Goods and Services Tax Act, 2017, whereby the order passed on 10.07.2020 was confirmed.

4. Learned counsel for the petitioner submitted that prior to commencement of GST regime, the petitioner was registered under the VAT Act as well as under the Service Tax Act under the trade name M/s Akash Enterprises. He further submitted that under the VAT Act, the petitioner is having TIN No.09278704481S and under the Service Tax Act, the petitioner is having registration No.ATIPK4398ND001. He further submitted that after enforcement of GST regime, the petitioner were required to be migrated only one GSTIN, but due to the fault of

respondents, two GSTINs were provided by the authorities; one under the VAT Act i.e. 09ATIPK4398N2ZR and another under the Service Tax Act i.e. 09ATIPK4398N1ZS. He further submitted that the petitioner on getting the first registration having GSTIN No.09ATIPK4398N2ZR, started doing his business and intimated to his supplier and purchaser the said GSTIN. He further submitted that the petitioner was engaged in the business of e-charging vouchers business of mobile phones and was doing his business with Reliance Industries Limited and and started issuing tax invoices and charging tax.

5. He further submitted that when the petitioner got the second provisional GSTIN number i.e.09ATIPK43981ZS, he gave this GSTIN number to other telecom companies. He further submitted that since the aforesaid first GSTIN was effective from 1.7.2017, but the status of the same become 'not migrated' on website, therefore the amount of valid Input Tax Credit (in short 'ITC') earned by the petitioner on the aforesaid GSTIN was claimed/availed by him on his GSTIN No.09ATIPK4398N1ZS at the time of filing returns, due to which the proceedings were initiated against the petitioner. He further submitted that the ITC availed in Form GSTR- 3B which the supplier has to file in GST-01 as well as in return in the form of GSTR-3B. If there is no difference in GSTIN, the benefit of the same cannot be given. He further submitted that since there was no mistake on the part of the petitioner, the benefit has illegally been denied up to the first stage.

6. He further submitted that during the pendency of the present petitions, a Circular has been issued vide letter No. GST/2022-03/53 on 02.01.2003.

7. He further prayed that since the benefit of said circular may be accorded to the petitioner, therefore the matter may be remanded back to the authorities for deciding afresh in view of the aforesaid circular dated 2.1.2023.

8. In support of his contentions, he has placed reliance upon the judgement of Division Bench of this Court in the case of M/s Shree Krishna Traders Vs. State of U.P., and Another passed in Writ Tax No.1106 of 2023 decided on 25.09.2023.

9. Learned Standing Counsel rebutted the said submission of the learned counsel for the petitioner and submitted that the benefit of circular

dated 2.1.2023 cannot be accorded to the petitioner as the matter has

already been adjudicated up to the first stage of first appellate authority

and therefore, he prays for dismissal of the present writ petitions.

10. This Court has perused the record.

11. Admittedly, on perusal of the record, it shows that the Circular

dated 2.1.2023 has been issued, which is beneficial to the petitioner,

wherein in Clause- 3D and in para 4 has been held as under:-

S.No. Scenario Clarification

d Where the supplier has filed FORM GSTR-1 as well return in Form GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient

In such cases, the difference in ITC claimed by the registered person in his return in FOR GSTR-3B and that available in FORM-2A may be handled by following the procedure provided in para 4 below

In addition, the proper officer of the

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in FORM GSTR-1 actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is requires to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

4.The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR-3B but which rare not reflecting in his FORM GSTR-2A. He shall then ascertain fulfillment of the following conditions of Section 16 of UPGST Act in respect of the input tax credit availed on such invoices by the said registered person;

(i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;

(ii) that he has received the goods or services or both;

(iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier."

12. On perusal of the aforesaid circular dated 2.1.2023 with regard to

the input availment in FORM-3B clearly shows that the supplier has to

file GSTR-1 as well as in the return of GSTR-3B for the tax period but he

has to declare the supply but if he has declared the supply with the wrong

GSTIN of the recipient in the Form of GSTR-1, in such cases, difference

in GSTR claimed by the registered person in his return in form of GSTR-

3B and that available in form of GSTR-2A may be only by the procedure

provided in para 4 in the aforesaid circular. Any circular or notification

issued during the pendency of the litigation, the benefit cannot be denied.

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13. The Hon'ble Apex Court in the case of Mathew M. Thomas and

others Vs. Commissioners of Income Tax, reported in 1999 U.P.T.C., 1072 (SC) has held that if a a benevolent Circular has come into existence during the pendency of an appeal, the benefit of the same should not be denied to the assess.

14. Further, adopting the similar view, this Court in the case of Commissioner of Sales Tax Vs. S/s. Agrawal Rolling Mills, Mirzapur, reported in 2003 UPTC 1248 has held that the benefit of circular, which came into existence during the pendency of the appeal, even up to the stage of revision, the benefit of same cannot be denied to the assessee.

15. Further, the Division Bench of this Court in the aforesaid Writ Tax No.1106 of 2023 in para 3, 4, 5 & 6 has held as under:-

"3. Learned counsel for the petitioner has invited attention of this Court to a circular dated 2.1.2023 with regard to the input tax availed in the form of GSTR-3B and has placed reliance on paragraph 3(d) to demonstrate that where the supplier has filed Form GSTR-1 as well as return in the Form of GSTR-3B for the tax period, but he has declared the supply with wrong GSTIN of the recipient in the Form of GSTR-1. In such cases, the difference in ITC claimed by the registered person in his return in Form of GSTR-3B and that available in Form GSTR-2A may be handled by following the procedure provided in para 4 of the circular. In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their Form GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

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4.Learned counsel for the petitioner further submits that the authority was required to follow certain procedure as laid down in paragraph 4 of the circular. He further submits that the impugned order though mentions the aforesaid circular, but the benefit under the said circular has not been extended to the petitioner. He submits that the impugned order may be set aside and the matter may be remitted to the authority concerned for decision afresh.

5. Sri Ankur Agarwal has no objection to the aforesaid proposition and submits that the matter may be remitted to the authority concerned for decision afresh.

6. In view of the fair statement made by Sri Ankur Agarwal, the impugned order dated 26.7.2023 is, hereby, set aside. The matter is remitted back to respondent no.2 to pass fresh orders within a period of one month from today, taking into consideration the circular as well as any other material relied upon by the petitioner in support of its case."

16. In view of the law laid down by the Hon'ble Apex Court, Division Bench as well as Single Bench of this Court and taking into consideration the peculiar facts and circumstances of the case, the impugned order is set aside and the matters are remanded back to the respondent no.2 to pass a fresh order within a period of one month from the date of production of certified copy of this order taking into consideration the Circular dated 2.1.2023 as well as judgments relied upon by the counsel for the petitioner in support of his contention of his cases.

17. Accordingly, the writ petitions are allowed.

Order Date :-11/10/2023

Pravesh Mishra

2023-10-18T10:04:19+0530 High Court of Judicature at Allahabad