Dr. Ambedakar Enterprisese, Through Its Proprietor, Mr. Munib Ram v. State of U.P. and Another

WRIT TAX No. 769 of 2023 | Decision: 2023-05-31 | Allahabad High Court

Neutral Citation No. - 2023:AHC:122735-DB

Court No. - 42

Case :- WRIT TAX No. - 769 of 2023

Petitioner :- Dr. Ambedakar Enterprisese, Through Its Proprietor, Mr. Munib Ram Respondent :- State of U.P. and Another Counsel for Petitioner :- Aditya Pandey Counsel for Respondent :- C.S.C.

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

1. Heard Sri Aditya Pandey, learned counsel for the petitioner and

Sri Ankur Agarwal, learned Standing Counsel for the State.

2. Challenge has been raised to the order dated 30.11.2022 passed

by the Assistant Commissioner, State Tax, Sector-2, Ghazipur

under Section 73(8) U.P. Goods and Services Tax Act, 2017 for the

tax period 2018-19.

3. Briefly, it is submitted that the impugned order is wholly ex

parte. It has been passed denying the petitioner, opportunity of

hearing. Referring to the show cause notice issued to the petitioner

on 10.6.2022, it has been submitted that date for personal hearing

was fixed 24.6.2022 whereas date for final reply was fixed

thereafter on 9.7.2022. Then it has been submitted that though the

petitioner could not appear on the date fixed for personal hearing,

no other date for hearing was fixed and no order or notice was

served on the petitioner. The order impugned was not passed on

the date fixed but about five months thereafter on 30.11.2022.

4. On the other hand, learned Standing Counsel submitted that the

petitioner failed to file any reply and to make any application to

submit any reply even after the due date fixed in the notice dated

10.6.2022 had expired. Then, it has been submitted that the

petitioner chose not to file any appeal against the impugned order

dated 30.11.2022. He approached the Court with delay.

5. Having heard learned counsel for the parties and having

perused the record, in the first place, it is not in doubt that rules of

natural justice have been breached. The adjudicating authority

ought to have fixed reasonable date for filing reply and for personal hearing. That procedure was not followed. It may be true that the petitioner may have been at fault in not filing reply on the date fixed and having not filed any application thereafter. Yet, the adjudicating authority chose not to pass any order and did not fix any other date for hearing in the matter for a long period of five months.

6. We see no reason for the adjudicating authority to pass that ex parte order, without any further notice. Since no order had been passed on that date, the adjudicating authority was obligated to fix another date. To that extent the petition must succeed. However, at the same time, there is fault on the part of the petitioner in neither filing appeal within limitation nor approaching this Court within reasonable time. Therefore, equities have to be balanced.

7. Accordingly, the writ petition is disposed of with the observation, in case the petitioner deposits a sum of Rs.75,000/- before the adjudicating authority-respondent No.2 within three weeks from today, the impugned order shall stand set aside. Further, petitioner may file its reply to the contents of the notice and the order within a period of two weeks thereafter.

8. If such compliance is made by the petitioner, the adjudicating authority may fix a fresh date and proceed in accordance with law. The petitioner before this Court undertakes not to take any undue adjournment in the proceedings before the adjudicating authority.

Order Date :- 31.5.2023 Kuldeep

2023-06-02T15:34:56+0530 High Court of Judicature at Allahabad