

Party Time Hospitality Prop. Smt. Punita Gupta Lko. v. State Of U.P. Thru Prin. Secy. Tax And Registration Lko And 2 Others

WRIT TAX No. 176 of 2023 | Decision: 2023-08-28 | Allahabad High Court (Lucknow Bench)

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Neutral Citation No. - 2023:AHC-LKO:57456

Court No. - 8

Case :- WRIT TAX No. - 176 of 2023

Petitioner :- Party Time Hospitality Prop. Smt. Punita Gupta Lko. Respondent :- State Of U.P. Thru Prin. Secy. Tax And Registration Lko And 2 Others Counsel for Petitioner :- Pradeep Agrawal Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned counsel for the petitioner and learned counsel for the respondents.
2. Vide a separate order, this Court had directed the respondents to produce the original record. The original record has been produced. The same is perused.
3. Present petition has been filed by the petitioner challenging the order dated 16.11.2021 whereby the demand was confirmed against the petitioner under Section 74 of GST Act as well as the order dated 04.08.2023 whereby the appeal preferred by the petitioner was dismissed.
4. Contention of learned counsel for the petitioner is that the petitioner had taken a party lawn for running the same in terms of a lease deed executed in his favor on 01.08.2018, which is on record, and according to the petitioner, he had nothing to do with the affairs of the party lawn prior to the said date. Subsequently, the show-cause notice was issued purporting to be under Section 74 of the GST Act on 28.09.2021 calling upon the petitioner to show cause. The said show-cause notice on record indicates the amount which the petitioner was required to pay, however, the show-cause notice was silent with regard to how Section 74 of GST Act could be invoked. The said show- cause notice, available in the original records, indicated the date of reply as 29.10.2021, however, no date of personal hearing, time of personal hearing or venue of personal hearing was disclosed in the said show-cause notice. The petitioner did not file a reply to the said show-cause notice, as such, an order came to be passed against the petitioner quantifying the demand of tax and penalty against the petitioner for the period July, 2017 to March, 2018.
5. Learned counsel for the petitioner draws my attention to the summary of the show-cause notice which indicated that on the basis of some survey carried out, it transpired to the department that the taxes which were required to be deposited was not deposited. The said summary of the show-cause notice, which is also available on record, does not demonstrate as to what part of fraud, misrepresentation or wilful misstatement was alleged against the petitioner. Against the order confirming the demand of tax and imposing penalty against the petitioner, the petitioner preferred an appeal which was dismissed by means of an order dated 04.08.2023 mainly on the ground that the same was beyond the prescribed period of limitation prescribed under Section 107 of the GST Act.
6. Learned counsel for the petitioner places reliance on the judgment of this Court in the case of M/s Mohini Traders v. State of U.P. & Anr.; Writ Tax No.550 of 2023 decided on 03.05.2023 wherein against a similar assessment order, this Court had interfered mainly on the ground that it was incumbent to grant an opportunity of hearing irrespective whether a reply was filed or not in terms of the mandate of Section 75(4) of GST Act.
7. A reliance has also been placed upon a judgment of this Court in the case of M/s Lari Almirah House v. State of U.P. & Ors.; Writ Tax No.1569 of 2022 decided on 12.04.2023. He also places reliance upon a judgment of this Court in the case of Bharat Mint & Allied Chemicals v. Commissioner of Commercial

Tax.; Writ Tax No.1029 of 2021 decided on 04.03.2022, wherein this Court had the occasion to deal with the scope off Section 75(4) of the GST Act.

8. Learned counsel for the respondent, on the other hand, argues that the petitioner did not file any reply despite the show-cause notice and in any case, the appeal was beyond the prescribed period of limitation and rightly dismissed.

9. Considering the submissions made at the Bar, from the order of assessment passed in pursuance to show-cause notice issued under Section 74 of GST Act, admittedly, no hearing has been accorded to the petitioner, which is contrary to the mandate of law prescribed under Section 75(4) of GST Act; as an expropriatory action, even otherwise, the principles of natural justice had to be complied with.

10. Thus, following the judgment in the case of M/s Mohini Traders (supra) as well as the other two judgments cited above, both the impugned orders dated 16.11.2021 & 04.08.2023 are set aside.

11. Matter is remanded to the respondents to pass orders afresh in accordance with law after giving an opportunity of hearing.

12. The writ petition is allowed in above terms.

13. The original record is returned to counsel for the respondent.

Order Date :- 28.8.2023 nishant

2023-08-28T17:19:35+0530 High Court of Judicature at Allahabad, Lucknow Bench