

M/S Sunil Enterprises v. Commissioner Commercial Tax And Another

WRIT TAX No. 730 of 2023 | Decision: 2023-05-29 | Allahabad High Court

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Neutral Citation No. - 2023:AHC:119080-DB

Court No. - 42 Case :- WRIT TAX No. - 730 of 2023 Petitioner :- M/S Sunil Enterprises Respondent :- Commissioner Commercial Tax And Another Counsel for Petitioner :- Ajay Kumar Yadav Counsel for Respondent :- C.S.C.

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

1. Heard Sri Ajay Kumar Yadav learned counsel for the petitioner and Sri Ankur Agarwal learned Standing Counsel.
2. Challenge has been raised to the adjudication order dated 31.5.2021 passed by the Deputy Commissioner, State Tax, Sector-10 Prayagraj with reference to ZD0904210095997 against the petitioner.
3. In the first place, the above order was appealable. Then, period of limitation to file that appeal has expired.
4. Despite the above two objection raised by the learned Standing Counsel, there is something more fundamental and critical both to the rights of the petitioner as also to the general scheme of the U.P. GST Act, 2017 and its implementation that commends us to entertain this petition.
5. Upon hearing learned counsel for parties, it is undisputed that the first notice of the above SCN/Statement reference issued to the petitioner is dated 03.4.2021. The impugned order has been passed on 31.5.2021 whereas again undisputedly last notice issued to the petitioner, in those proceedings was for the date fixed 08.6.2021 for reply and, 10.6.2021 for personal hearing.
6. Much before the arrival of those dates, impugned order came to be passed and uploaded as has thus been served on the petitioner. Neither on the general rule of natural justice applicable to these proceedings nor in the context of section 75(4) of the Act, the course adopted by the adjudicating authority, was permissible.
7. Plainly, rules of natural justice have been flouted, absolutely. Once date had been fixed and communicated to the petitioner

both for the purpose of filing written reply and for the purpose of oral hearing, no adjudication order may have been passed before that date arrived.

8. In view of the above satisfaction reached, in the undisputed facts of the present case, preliminary objections raised by the learned Standing Counsel are overruled.

9. Rule of fairness must prevail to ensure that the needs and requirement of justice are met. To ensure due compliance, writ Court may always and in the present facts, does feel compelled to interfere.

10. Accordingly the order dated 31.5.2021 is set aside. Matter is remitted to the adjudicating authority to pass fresh order strictly in accordance with law, necessarily involving adequate opportunity of hearing being granted to the petitioner, both for the purpose of filing written reply as also of personal hearing. That order may be passed recording adequate reasons to deal with the objections that may be raised by the petitioner.

11. Writ petition is allowed.

12. Let the Registrar Compliance communicate this order to the Commissioner, Commercial Tax, U.P. Lucknow to ensure that such practices are done away in real time.

Order Date :- 29.5.2023 Faraz

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

2023-05-30T10:43:20+0530 High Court of Judicature at Allahabad