M/S Panther Security Guard Services, Thru. Proprietor Chandra Shekhar Singh v. State Of U.P. Thru. Addl. Chief Secy. State Tax Deptt. Lucknow U.P. And 2 Others

WRIT TAX No. 194 of 2023 | Decision: 2023-10-12 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2023:AHC-LKO:66333

Court No. - 8

Case :- WRIT TAX No. - 194 of 2023

Petitioner :- M/S Panther Security Guard Services, Thru. Proprietor Chandra Shekhar Singh Respondent :- State Of U.P. Thru. Addl. Chief Secy. State Tax Deptt. Lucknow U.P. And 2 Others Counsel for Petitioner :- Ankit Pande Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard Dr. R. S. Pandey Senior Advocate assisted by Sri Ankit Pande the counsel for the petitioner and the learned Standing Counsel.

2. The present petition has been filed by the petitioner challenging the orders dated 03.11.2022 (Annexure no.2) whereby the demand has been confirmed against the petitioner under section 74 of the GST Act as well as the order dated 10.07.2023 whereby the appeal preferred by the petitioner was dismissed as having become time barred.

3. In terms of the order passed by this Court on 04.10.2023, the records have been produced. On perusal of the records, it is revealed that while a show cause notice was served upon the petitioner under section 74 of the Act and in the first reminder issued to the petitioner on 04.08.2021, the date for filing the reply was fixed as 01.11.2021, the date of personal hearing was also fixed on 01.11.2021, the time of personal hearing was also indicated as well as the venue of the personal hearing was also clarified, however, as the petitioner had moved an application seeking adjournment, a second reminder was issued to the petitioner on 04.08.2021 in which the date by which the reply was to be submitted was fixed as 25.02.2022. As regards the coluomn against the date of personal hearing, the time of personal hearing and venue of personal hearing, the words 'NA' were prescribed. The petitioner filed a detailed reply to the show cause notices denying the allegations levelled against him. However, without granting an opportunity of hearing, which is required under section 75(4) of the GST Act, an order came to be passed against the petitioner confirming the demands as raised in the show cause notice. The said order is on record. Although the reply filed by the petitioner was mentioned in the adjudication order, however, from the order as well as from the records, which have been produced today, clearly no opportunity of hearing was granted to the petitioner. The appeal filed by the petitioner was dismissed as being barred by

limitation.

4. In the light of the said, the counsel for the petitioner argues that both the orders are under challenge and as the adjudication order has not merged in the appellate order and appeal was not decided on merits, this Court can go into the assessment order and review the same. He argues that clearly no opportunity of hearing was granted to the petitioner while passing the order dated 03.11.2022 nor was any date fixed for hearing, which is in clear violation of the mandate of Section 75(4) of the GST Act.

5. He places reliance on the judgment of this Court in the case of Bharat Mint and Allied Chemicals vs. Commissioner of Commercial Tax and two others as well as the judgment of this Court in the case of M/s Santosh Traders vs. State of U.P. and others; Writ Tax No.174 of 2023 decided on 28.08.2023 wherein this Court following the judgment in the case of M/s Bharat Mint (supra) had quashed the assessment orders solely on the ground that no opportunity of hearing, which is required under section

75(4) of the Act was granted to the petitioner.

6. Considering the fact that in the present case also, no opportunity of hearing was granted to the petitioner, neither any date for hearing was fixed, as such, following the said two judgments in the case of M/s Bharat Mint (supra) and M/s Santosh Traders (supra), the writ petition deserves to be allowed. The order dated 03.11.2022 as well as the order dated 10.07.2023 are quashed. The matter is remanded to the adjudicating authority to pass a fresh order after giving an opportunity of hearing to the petitioner in accordance with law.

7. The writ petition stands disposed off in terms of the said order. The original records is returned to the learned Standing Counsel.

Order Date :- 12.10.2023 VNP/-

2023-10-12T14:20:16+0530 High Court of Judicature at Allahabad, Lucknow Bench