M/S Vighnaharta Const. Thru. Its Prop. Vishnu Bhagwan Shukla Distt. Gonda v. State Of U.P Thru. Commissioner Cgst And Central Excise Lko. Zone And 2 Others

WRIT TAX No. 143 of 2023 | Decision: 2023-10-18 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2023:AHC-LKO:68563

Court No. - 8

Case :- WRIT TAX No. - 143 of 2023

Petitioner :- M/S Vighnaharta Const. Thru. Its Prop. Vishnu Bhagwan Shukla Distt. Gonda Respondent :- State Of U.P Thru. Commissioner Cgst And Central Excise Lko. Zone And 2 Others Counsel for Petitioner :- Sachin Srivastava Counsel for Respondent :- Ratnesh Lal, C.S.C.

Hon'ble Pankaj Bhatia,J.

1. The counsel appearing on behalf of the respondent no.1, states that the respondent no.1 has been improperly described. From the records also, the said objection appears to be correct. However, the outcome of the writ petition would not get affected only because of improper description of respondent no.1, as such, after hearing the matter, the final orders are being passed in the matter.

2. The contention of the counsel for the petitioner is that the petitioner's firm is registered under the GST and is being taxed in accordance with law. It bears from the record that on 08.09.2020 a show cause notice was issued under section 61 of the GST Act and thereafter an order came to be passed under section 74(9) on 14.07.2021 whereby the demand has been confirmed against the petitioner and was directed to be paid. Thereafter the petitioner claimed that he was suffering from incurable disease and in that regard, he has annexed the medical certificate on record, as such, the petitioner could not prefer the appeal within the time prescribed as a result whereof the appeal preferred by the petitioner came to be dismissed on 14.07.2021.

3. It is argued that the appeal has been dismissed as being beyond the prescribed period of limitation, thus, the original order does not get merged with the appellate order. With regard to the order passed under section 74(9) of the GST Act, the main submission of the counsel for the petitioner is that the petitioner was served with a show cause notice and on account of illness, the petitioner had sought adjournment with a further time to file the reply, however, thereafter neither any date for hearing was fixed nor the hearing was accorded to the petitioner and straightway, the order came to be passed under section 74(9) of the GST Act.

4. With regard to the said averments, this court had called for the records from the respondents to ascertain as to whether any opportunity of hearing was granted to the petitioner or not. In

terms of the said order, the records have been produced.

5. From the perusal of the records, it is clear that after the petitioner had sought adjournment, a reminder notice was sent to the petitioner on 10.02.2021 wherein the date by which the reply was to be submitted was indicated as 17.04.2021, however, in the column of date of personal hearing, the time of personal hearing and venue of personal hearing, the words 'NA' were transcribed.

6. From the order impugned passed under section 74 also, it transpires that no opportunity of hearing was granted to the petitioner.

7. The counsel for the petitioner, in the light of the said documents, argues that in similar circumstances, this court had allowed a petition Writ Tax No.174 of 2023 and had remanded the matter mainly on the ground that in terms of section 75(4) of the GST Act, it is mandatory that an opportunity of hearing be granted which admittedly has not been done. Thus, following the judgment 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, the present petition also deserves to be allowed. The order passed against the petitioner under section 74 is quashed. As the main order has been quashed, the order dated 26.12.2022 also losses its efficacy and is quashed. The respondent no.3 may pass a fresh order after giving an opportunity of hearing in accordance with law.

8. The writ petition stands allowed in terms of the said order.

9. The original records are being returned to the learned Standing Counsel.

Order Date :- 18.10.2023 VNP/-

2023-10-18T17:19:18+0530 High Court of Judicature at Allahabad, Lucknow Bench