Mittal Agro Private Ltd. Thru. Its Director Shri Sukkhu Lal Chandwani v. Commissioner ,Commercial Tax,U.P. Lko. And 2 Others

WRIT TAX No. 201 of 2023 | Decision: 2023-10-17 | Allahabad High Court (Lucknow Bench)

Neutral Citation No. - 2023:AHC-LKO:67833

Court No. - 8

Case :- WRIT TAX No. - 201 of 2023

Petitioner :- Mittal Agro Private Ltd. Thru. Its Director Shri Sukkhu Lal Chandwani Respondent :- Commissioner ,Commercial Tax,U.P. Lko. And 2 Others Counsel for Petitioner :- Manish Singh Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard learned Counsel for the petitioner as well as the learned Standing Counsel and perused the record, which was produced by the learned Standing Counsel in pursuance to the order dated 10.10.2023.

2. The present petition has been filed challenging the order dated 24.06.2022 (Annexure-7) passed against the petitioner under Section 73 of the GST Act, 2017 as well as the appellate order dated 04.07.2023 (Annexure-1), by which the appeal preferred by the petitioner has been dismissed.

3. The submission in brief is that the petitioner is a firm dealing with sell etc. and duly registered under the GST Act. The petitioner was served with a show cause notice dated 26.03.2022 purported to be under Section 73 of the GST Act mainly on the ground that he claimed ITC without authorization. The said allegation was founded on the basis that the firm, based on whose supplies the ITC was availed, was not in existence.

4. The petitioner filed a detailed reply to the said show cause notice and denied the allegations. Along with the said objection, he specifically stated that the petitioner had claimed the benefit based upon the documents, which were uploaded and the entire transactions were through the banking channels. Despite the said objection and without there being any consideration on these aspects, the order dated 24.06.2022 came to be passed against the petitioner under Section 73 of the Act assessing the ITC to be paid by the petitioner. The said ITC was directed to be paid along with penalty. The total amount assessed was Rs.26,95,757.40. The petitioner preferred an appeal against the said order and along with memo of appeal, the entire documents including the case laws were appended, however, without considering any of the material appended along with the memo

of appeal, an appellate order came to be passed on 04.07.2023 dismissing the appeal, which is impugned in the writ petition.

5. The appellate order records that despite opportunity neither the representative of the department appeared nor did the petitioner appear, however, dealing with the submissions of appeal on merit, the appellate authority without application of mind or considering the documents, upheld the assessment order passed against the petitioner.

6. As the Appellate Tribunal as envisaged under the Act has not been constituted so far, the orders have been challenged by filing the present writ petition.

7. On perusal of the records, it is clearly revealed that along with the memo of appeal, the petitioner had filed the documents to demonstrate that the transactions based upon which the ITC was claimed, were through the banking channels and the documents were duly uploaded on the GST portal. None of the said aspect has been considered in the appellate order, which is impugned in the present writ petition.

8. It is settled that a non speaking order is violative of Article 14 of the Constitution of India, thus, on the limited ground of not considering any material whatsoever and the order being a non-speaking order, the order dated 04.07.2023 is quashed.

9. The matter is remanded back to the appellate authority to pass an order on the appeal of the petitioner after giving opportunity of hearing and considering the material on record, in accordance with law.

10. In the above terms, the writ petition stands disposed off.

Order Date :- 17.10.2023 akverma

2023-10-17T17:30:27+0530 High Court of Judicature at Allahabad, Lucknow Bench