M/S Tanishka International v. State of U.P. and 2 Others

WRIT TAX No. 847 of 2022 | 2023-01-30 | Allahabad High Court

Official court-text rendition | Finin2min Judgment Intelligence

HIGH COURT OF JUDICATURE AT ALLAHABAD

1. Challenge in the present writ petition is to the order dated
February 23, 2021 (DRC-07) Annexure-2 to the writ petition passed by
respondent No.2 under Section 74(9) of the Central Goods and Service
Tax Act, 2017 (hereinafter referred to as the "Act").

2. The argument raised by the learned counsel for the petitioner is
that in terms of the provisions of Rule 142(1A) of the Central Goods and
Service Tax Rules, 2017 (hereinafter referred to as "the Rules) as
existing at the time of initiation of the proceedings against the petitioner

Chief Justice's Court Serial No.3

WRIT TAX No. - 847 of 2022

Through :- Mr. Ram M. Kaushik, Advocate

Through :- Mr. Ankur Agarwal, Standing Counsel for the respondents

CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE HON'BLE J.J. MUNIR, JUDGE

State of U.P. and others .....Respondents

before it was amended on October 15, 2020, before passing any order
under Section 74 of the Act, a show cause notice in Part A of FORM
GST DRC-01A is required to be issued. It is only thereafter that the
jurisdiction is vested with the Competent Authority to pass order. In the
case in hand, notice in Part A of FORM GST DRC-01A having not been
issued, any subsequent proceeding will be without jurisdiction as the
petitioner did not have fair opportunity to respond.

3. In support of the argument, reliance was placed on a Division
Bench judgment of Delhi High Court in Gulati Enterprises v. Central
Board of Indirect Taxes and Customs & others, 2022 U.P.T.C. (Vol.
111) - 1271 and order dated January 2, 2023 passed by this Court in Writ
Tax No.1512 of 2022, titled as M/s Skyline Automation Industries v.
State of U.P. and another.

4. On the other hand, learned counsel for the respondents, while not
disputing the fact that notice in Part A of FORM GST DRC-01A was not
issued, submitted that subsequent reminders had given fair opportunity
of hearing to the petitioner to place his case before the authority
concerned, which he failed to avail of. The impugned order now passed

is appealable under Section 107 of the Act.

5. After hearing learned counsel for the parties, in our opinion, present writ petition deserves to be allowed, as admittedly for initiation of proceedings against the petitioner a notice as provided for under Rule 142(1A) of the Rules in Part A of FORM GST DRC-01A was not issued, which provided for communication of details of any tax, interest and penalties as ascertained by the officer. Any subsequent reminder will not cure inherent defect in proceedings initiated against the petitioner. Similar view has been expressed by the Delhi High Court in Gulati Enterprises' case (supra) and this Court in M/s Skyline Automation Industries' cases (supra) wherein also in identical facts pertaining to a case prior to the amendment of Rule 142(1A) of the Rules with effect from October 15, 2020, the impugned show cause notice was set aside and the matter was remitted back to authority concerned to initiate fresh proceedings in accordance with law.

6. For the reasons mentioned above, the writ petition is allowed. The impugned order dated November 10, 2022 is quashed. However, with liberty to the respondents to initiate fresh proceedings against the petitioner in accordance with law.

Whether the order is speaking : Yes/No

Whether the order is reportable : Yes