

Court No. - 6

Case :- WRIT TAX No. - 35 of 2024

Petitioner :- M/S Mansoori Enterprises Thru. Prop. Mohd. Shakeel

Respondent :- U.O.I. Thru. Secy. Ministry Of Finance Deptt. Of Revenue, New Delhi And 2 Others

Counsel for Petitioner :- Dheeraj Srivastava, Shailesh Verma

Counsel for Respondent :- A.S.G.I., Dipak Seth, Kuldeepak Nag (K.D.Nag)

Hon'ble Alok Mathur, J.

1. Heard Sri Dheeraj Srivastava, learned counsel for the petitioner as well as Sri K. D. Nag for respondent Nos. 2 and 3.

2 By means of the present writ petition the petitioner has challenged the order dated 20.11.2023 passed under Section 73 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act) which was passed by Superintendent, Central Goods and Services Tax and Central Excise, Range - Bahraich.

3. The main ground of challenge to the said order was that respondent No.3 did not have jurisdiction to pass the said order in light of the circular dated 9.2.2018 issued by Government of India, Ministry of Finance, Department of Revenue. It is in aforesaid facts that learned counsel for respondent No.s 2 and 3 was granted time to seek instructions and following orders were passed:-

"1. Heard Sri Dheeraj Srivastava, learned counsel for the petitioner. Sri K.D. Nag, Learned Senior Standing Counsel has filed memo of appearance on behalf of respondent nos. 2 and 3, same is taken on record.

2. In the present writ petition the petitioner has challenged the order dated 20.11.2023, passed by the Superintendent, Central Goods and Service Tax & Central Excise, Bahraich, under Section 73 of the Central Goods and Service Tax and Central Excise Act, 2017, disallowing ITC for an amount of Rs.1624246.88.

3. Learned counsel for the petitioner at the very outset submits that the Superintendent, Central Goods and Service Tax & Central Excise did not had jurisdiction to pass such order. Considering the fact that respondents themselves have issued an order on 09.02.2018 assigning the jurisdiction to various

authorities in relation to the maximum amount of Central Tax not paid or short paid or erroneously refunded or input tax credit of central tax wrongly availed or utilized.

4. It is stated that according to the circular dated 09.02.2018, power of the Superintendent, Central Goods and Service Tax & Central Excise is limited to the matter not exceeding Rs.10,00,000/- and in the present case the amount involved is more than Rs.16,00,000/- and consequently, the impugned order passed by it is without jurisdiction.

5. Learned counsel for the respondents prays for and is granted two days time to seek instructions in this regard.

6. List this case on 23.02.2024, amongst top ten cases."

4. Sri K. D. Nag, on the basis of written instructions received from Assistant Commissioner, Central GST and Central Excise Division, Lucknow -IV, Barabanki, has fairly submitted that the impugned order dated 20.11.2023 is not proper to the extent that it was not passed by proper officer as per the Circular No.31/05/2018-GST dated 9th February, 2018 as the monetary limit of the input tax credit wrongly availed or utilized of central tax is Rs.Ten Lakhs and State Tax Rs.Ten Lakhs, totaling to Rs.Twenty Lakhs for issuance of show cause notices and passing of orders under Sections 73 and 74 of CGST Act.

5. In light of the above instructions received by learned counsel for the respondents, evidently the impugned order dated 20.11.2023, as contained in Annexure No.1 to the writ petition, is without jurisdiction and is accordingly set aside. Liberty is granted to the respondents to proceed afresh in accordance with law.

6. The writ petition is **allowed**.

(Alok Mathur, J.)

Order Date :- 23.2.2024

RKM.