

Court No. - 39

Case :- WRIT TAX No. - 199 of 2024

Petitioner :- M/S Shubham Steel Traders

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Manjive Shukla,J.

1. Heard Mr. Aditya Pandey, learned counsel for the petitioner, Mr. Ankur Agrawal, learned Standing Counsel for the State respondents and perused the record.
2. Challenge has been raised to the order dated 20.11.2023 passed on FORM GST DRC-07 under Section 74 (9) of the UPGST Act, 2017 (hereinafter referred to as the 'Act').
3. Merit issues apart, it is undisputed that on 20.05.2023 a notice under Section 74 of the Act, was issued to the petitioner granting one month time to make compliance. Since the petitioner chose to contest the proceedings, on 13.06.2023 notice on DRC-01 was issued granting the petitioner 15 days time to file reply. At that stage a typographical error appears to have crept in the proceedings in as much as the notice issued on DRC-01 was wrongly described to be issued under Section 74(5) of the Act in place of section 74 (1) of the Act.
4. That error apart, it is also undisputed to the respondent that the petitioner did file reply to the notice on 26.07.2023. Thereafter no proceeding appears to have been conducted over a long period of four months. For the first time on 31.10.2023 reminder notice was

issued granting petitioner five days time to furnish certain documents called by the respondent authority. The date fixed in the proceedings was 06.11.2023. On 06.11.2023, petitioner appeared before the authority and sought time.

5. On the other hand Mr. Ankur Agrawal, learned Standing Counsel states that the petitioner did not appear on the next date. In any case no time was sought.

6. Whatever be the correct fact as to the status of proceedings conducted on 06.11.2023, the order does not make any mention of the same. It is equally true that the assessing authority did not pass any order on the date fixed i.e. 06.11.2023. Instead he has chosen to pass the order on 20.11.2023, 14 days thereafter. Neither the impugned order nor the instructions of the learned Standing Counsel indicate that any date was fixed for 20.11.2023. Without fixing any further date and without giving petitioner any further opportunity the impugned order has been passed.

7. In such facts, learned counsel for the petitioner submits that the impugned order is really ex-parte. It has been passed in great haste in as much as only five days' time was allowed to the petitioner under notice dated 31.10.2023 to produce the supporting documents. Without rejecting the petitioner's request for time, the respondent authority chose not to pass the final order on that date. He also did not communicate the fresh date in the proceedings.

8. Thus relying on Coordinate Bench decision of this Court in ***M/S Videocon D2H Limited and Ors. Vs. State of U.P. and 3 Ors (2016) 93 UPTC 237, M/S Aroma Chemicals Vs. Union of India & Ors Neutral Citation No.-2014:AHC:60699-DB***, it has been submitted, such an order may not stand.

9. While learned Standing Counsel has submitted that petitioner has the remedy of appeal and that the petitioner is itself to blame in as much he did not comply with the notice dated 31.10.2023, we are not impressed by the objection being raised.

10. Rules of natural justice ensure fairness in proceedings. Once the authority had fixed the matter for hearing on 06.11.2023 it was incumbent on that authority either to pass the order or to fix another date and communicate the same to the petitioner. Communication of the other date was necessary as according to the assessing authority the petitioner failed to appear before it on the date fixed on 06.11.2023.

11. By not passing the order on 06.11.2023 and not communicating the next date fixed in the proceedings, the assessing authority forced the ex-parte nature of the order on the petitioner, by its own conduct.

12. In absence of any provision under the Act to allow for ex-parte proceedings to arise in such facts, we find that the breach of natural justice pressed by the petitioner is real.

13. Also we are mindful that proceeding had remained pending for four months since reply was filed by the petitioner, without any date being fixed. Thus the short time of five days granted by the notice dated 13.06.2023 itself suggests the unnecessary hurry in which the proceedings were sought to be concluded. In any case since no order was passed on 06.11.2023 and no notice was issued for the next date 20.11.2023, we find that the proceedings had been wrongly concluded ex-parte against the petitioner.

14. In such facts, no useful purpose may be served in keeping the petition pending or calling counter affidavit at this stage.

15. Accordingly the writ petition is ***disposed of*** with the following observations :-

(I) The order dated 20.11.2023 is set aside. The petitioner may treat the said order to be the final notice issued to him. It may file its reply together with all supporting documents within a period of two weeks from today.

(II) Thereupon the respondent No. 4 may fix a short date for hearing with at least one week notice to the petitioner and pass appropriate reasoned order after hearing the petitioner, thereafter.

Order Date :- 21.2.2024

Gaurav

(Manjive Shukla, J.) (S.D. Singh, J.)