

2024 (85) G.S.T.L. 258 (All.)

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

Saumitra Dayal Singh and Donadi Ramesh, JJ.

SIDDH SALES CORPORATION

Versus

STATE OF U.P.

Writ Tax No. 545 of 2024, decided on 16-4-2024

Demand - Tax or ITC not involving fraud, etc. - Violation of natural justice - Period 2021-22 - Notice under Section 73(1) of CGST Act, 2017 was issued to assessee but assessee did not receive any notice - No order sheet entry of any of dates fixed for hearing was available - Impugned order was passed without issuance of any notice or communication of any date of hearing fixed in proceedings - *HELD* : Adjudication orders give rise to serious civil consequences - They create demands of tax - Penalties are often imposed - In self-assessment scheme, unless noticee/assessee is given fair opportunity to furnish its reply and to present his case before Adjudicating Authority, adjudication orders might only give rise to frivolous and wholly avoidable litigation contrary to statutory scheme itself - Assessee was to be given opportunity to furnish its detailed reply and thereafter, fresh date of hearing was to be fixed and matter was to be readjudicated - Section 73 of Central Goods and Services Tax Act, 2017 - Section 73 of Uttar Pradesh Goods and Services Tax Act, 2017. *[paras 7 to 10]*

Matter remanded in favour of assessee

REPRESENTED BY : Shri Yashonidhi Shukla, Counsel, for the Petitioner.

[Order]. - Heard Sri Yashonidhi Shukla, Learned Counsel for the petitioner and Sri Ankur Agarwal, Learned Counsel for the revenue.

2. Challenge has been raised to the adjudication order dated 23-2-2024 passed under Section 73 of the UP GST Act, 2017, read with Rule 142(5) of the Rules framed thereunder.

3. Primarily, challenge raised is to the *ex parte* nature of the order. It has been urged, no proper notice to file reply and in any case, no prior notice of hearing was served to the petitioner before the impugned order came to be passed.

4. On such submissions we had required the Learned Standing Counsel to obtain written instructions. Earlier, instructions had been obtained indicating that the impugned order had been passed after affording due opportunity to the petitioner. Hence, on 9-4-2024 we had passed the below quoted order :

“1. Sri Ankur Agarwal, Learned Standing Counsel relies on the written instructions received by him. Copy of the same has been marked as ‘X’ and retained on record. It reveals, opportunity of hearing was given to the petitioner. The written instructions further records that appropriate entries are recorded on the order sheet.

2. Put up as fresh on 16-4-2024 to enable Learned Standing Counsel to produce a copy of the order sheet.”

5. Today, Sri Ankur Agarwal, Learned Standing Counsel has produced a copy of the order sheet of the case leading to the impugned order. The same has been marked as ‘XX’ and retained on record. Perusal of the order sheet reveals, prior to 20-7-2023 the petitioner had participated in the proceedings with respect to verification of the return under Section 67 of the Act.

6. On 20-7-2023, notice under Section 73(1) of the Act was issued. On that, the date fixed was 19-8-2023. There is no order sheet entry of the date 19-8-2023. Instead one day earlier, on 18-8-2023, the order sheet records, the case was adjourned on the request of the petitioner for the next date fixed 7-9-2023. At the same time, there is no noting made on the order sheet by the petitioner or its Counsel.

7. Those deficiencies apart, more critically there is no order sheet entry of the next date fixed 7-9-2023. Again, three days before the date fixed on 4-9-2023, the order sheet records that counsel for the petitioner appeared and produced the ledger for the period 2021-22. That order sheet entry is disclosed to be noted by the Counsel for the petitioner on the date 4-9-2023. At the same time, no further date was fixed either on 4-9-2023 or 7-9-2023. No other notice is disclosed to have been issued to the petitioner for any other date of proceedings. At the same time, on 8-11-2023, the order sheet record, the petitioner submitted its reply on DRC-06. Again, no date of hearing was fixed or recorded on the order sheet. Almost three months thereafter on 23-2-2024 the order sheet records that the impugned order was passed.

8. While there can be no dispute to the fact that the proceedings conducted by the respondent authorities are wholly irregular and contrary to the provisions of law and *ex parte*, without issuance of any notice to the petitioner and without communication of any date of hearing fixed in the proceedings, we have made detailed note of the order sheet to record the wholly unacceptable conduct of the respondent authority in proceeding in the manner in which he has.

9. Adjudication orders give rise to serious civil consequences. They create demands of tax as also penalties are often imposed. In the self-assessment scheme, unless the noticee/assessee is given fair opportunity to furnish its reply and to present his case before the adjudicating authority the adjudication orders may only give rise to frivolous and wholly avoidable litigation contrary to the statutory scheme itself.

10. Accordingly, in the present facts, no useful purpose may be served in keeping the present petition pending or calling for counter affidavit at this stage. Present writ petition is *disposed of* with the following directions :

(i) The impugned order dated 23-2-2024 is set aside.

(ii) The petitioner may treat the impugned order to be a final show cause notice and furnish its detailed reply within a period of two weeks from today.

(iii) Subject to such compliance made by the petitioner, respondent No. 2 may fix a fresh date of hearing with proper notice in the manner prescribed.

(iv) After hearing the parties, appropriate reasoned order may be passed dealing with the objections raised by the petitioner.

11. Let a copy of this order be communicated to respondent No. 3 for taking all corrective measures including appropriate corrective action with respect to the conduct offered by respondent No. 2.