

पत्र संख्या-न्याय-5(1)रिट-2/इलाहाबाद/2024-25/

277

/वाणिज्य कर

प्रेषक,

आयुक्त, वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

सेवा में,

अपर आयुक्त, वाणिज्य कर, गौतमबुद्धनगर, जोन-नोएडा।

समस्त अपर आयुक्त ग्रेड-1, वाणिज्य कर, उ०प्र०।

समस्त अपर आयुक्त ग्रेड-2 (वि०अनु०शा०), वाणिज्य कर, उ०प्र०।

(वाद अनुभाग)

लखनऊ :: दिनांक :: 07 अप्रैल, 2024

महोदय,

कृपया अपर आयुक्त ग्रेड-1, (उ०न्या०कार्य०) वाणिज्य कर प्रयागराज के पत्र संख्या-258 (2) दिनांक 18.04.2024 का सन्दर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा रिट टैक्स संख्या-545/2024 मैसर्स सिद्ध सेल्स कार्पोरेशन बनाम उ०प्र० सरकार व 2 अन्य के वाद में मा० उच्च न्यायालय इलाहाबाद द्वारा आदेश दिनांक 16.04.2024 की प्रति संलग्न कर प्रेषित की गई है।

मा० उच्च न्यायालय इलाहाबाद द्वारा दिनांक 16.04.2024 को निम्न आदेश पारित किया गया है :-

"1. 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 23.02.2024 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 09.04.2024 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 16.04.2024 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 20.07.2023 the petitioner had participated in the proceedings with respect to verification of the return under Section 67 of the Act.

6. On 20.07.2023, notice under Section 73(1) of the Act was issued. On that, the date fixed was 19.08.2023. There is no order sheet entry of the date 19.08.2023. Instead one day earlier, on 18.08.2023, the order sheet records, the case was adjourned on the request of the petitioner for the next date fixed 07.09.2023. At the same time, there is no noting made on the order sheet by the petitioner or its counsel.

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7. Those deficiencies apart, more critically there is no order sheet entry of the next date fixed 07.09.2023. Again, three days before the date fixed on 04.09.2023, 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 04.09.2023. At the same time, no further date was fixed either on 04.09.2023 or 07.09.2023. No other notice is disclosed to have been issued to the petitioner for any other date of proceedings. At the same time, on 08.11.2023, 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 23.02.2024 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 23.02.2024 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."

माननीय उच्च न्यायालय के उक्त आदेश में कर निर्धारण अधिकारी द्वारा आर्डर शीट पर की गई अनियमितताओं का संज्ञान लिया गया है। प्रत्येक अधिकारी हेतु यह आवश्यक है कि वह विधि द्वारा निर्धारित प्रक्रिया का पालन करते हुए ही कोई निर्णय करें।

अतः निर्देशित किया जाता है कि अपने अधीनस्थ समस्त अधिकारियों को उक्त से अवगत कराए तथा माननीय उच्च न्यायालय के उक्त आदेश का संज्ञान लेते हुए किसी भी विधिक कार्यवाही में निर्धारित विधिक प्रक्रिया का पूर्णरूप से अनुपालन सुनिश्चित किया जाये।

यह पत्र आयुक्त, वाणिज्य कर, उ0प्र0 के अनुमोदनोपरान्त जारी किया जा रहा है।

संलग्नक—उपरोक्तानुसार।

भवदीय,

(अमर नाथ यादव)

अपर आयुक्त (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

पृष्ठांकन पत्र संख्या व दिनांक उक्त।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

1. अपर आयुक्त ग्रेड-1/2 (उ०न्या०कार्य), वाणिज्य कर, प्रयागराज/लखनऊ।
2. संयुक्त आयुक्त(आई०टी०), वाणिज्य कर, मुख्यालय को इस निर्देश के साथ कि उक्त को विभागीय वेबसाइट पर समस्त अधिकारियों के सूचनार्थ प्रकाशित करने का कष्ट करें।

and
02.5.24

अपर आयुक्त (विधि), वाणिज्य कर,
उत्तर प्रदेश, लखनऊ।

Court No. - 39**Case :-** WRIT TAX No. - 545 of 2024**Petitioner :-** M/S Siddh Sales Corporation**Respondent :-** State Of Up And 2 Others**Counsel for Petitioner :-** Yashonidhi Shukla**Counsel for Respondent :-** C.S.C.**Hon'ble Saumitra Dayal Singh,J.****Hon'ble Donadi Ramesh,J.**

1. 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 23.02.2024 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 09.04.2024 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.
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retained on record. Perusal of the order sheet reveals, prior to 20.07.2023 the petitioner had participated in the proceedings with respect to verification of the return under Section 67 of the Act.

6. On 20.07.2023, notice under Section 73(1) of the Act was issued. On that, the date fixed was 19.08.2023. There is no order sheet entry of the date 19.08.2023. Instead one day earlier, on 18.08.2023, the order sheet records, the case was adjourned on the request of the petitioner for the next date fixed 07.09.2023. 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 07.09.2023. Again, three days before the date fixed on 04.09.2023, 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 04.09.2023. At the same time, no further date was fixed either on 04.09.2023 or 07.09.2023. No other notice is disclosed to have been issued to the petitioner for any other date of proceedings. At the same time, on 08.11.2023, 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 23.02.2024 the order sheet records that the impugned order was passed.

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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 23.02.2024 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.

Order Date :- 16.4.2024
Abhilash

(Donadi Ramesh, J.) (S. D. Singh, J.)