

Court No. - 42

Case :- WRIT TAX No. - 942 of 2018

Petitioner :- M/S Jai Baba Amarnath Industries

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- C.S.C., Anant Kumar
Tiwari, Devendra Gupta, Krishna Ji Shukla, S.C.

Hon'ble Alok Mathur, J.

Heard Mr. Krishna Ji Shukla, as well as Mr. Anant Kumar Tiwari, learned counsels for Union of India, Mr. Bipin Kumar Pandey, learned Standing Counsel for the State of U.P. , Mr. Bipin Kushwaha, holding brief of Mr. Nisant Mishra, learned counsel for the petitioner in other writ petitions are present. None appears on behalf of the learned counsel for the petitioner in this writ petition.

Mr. Mahendra Ranga, Principal Commissioner, CGST, Lucknow is present in Court in pursuance to the Court's order dated 08.01.2020 and an affidavit filed by him as per direction of this Court, is taken on record.

It has been stated in the affidavit that in terms of Section 109 of the U.P. Goods and Service Tax Act, 2017 (hereinafter referred to as "the GST Tribunal") the U.P. Government vide letter dated 21.02.2019 initially requested the GST Council to consider a proposal for constitution of State bench of GST Appellate Tribunal at Lucknow and 20 area Benches at 16 different locations. Subsequently the Allahabad Bench vide its order dated 28.02.2019 in Writ Petition No. 655 of 2018 held that the Appellate Tribunal should be setup in Allahabad. Accordingly, the State of U.P. vide letter dated 05.03.2019 revised their proposal dated 21.02.2019 to the extent that the State Bench of the Appellate Tribunal should be constituted at Allahabad along with 19 Area Benches.

On 15.03.2019, they again revised their proposal for constitution of 5 Benches of Appellate Tribunal i.e. one State Bench at Prayagraj and four Area Benches at Ghaziabad, Lucknow, Agra and Varanasi. The GST Council in its 35th meeting on 21.06.2019 has considered the aspect of constitution of State and Area Benches of GST Appellate Tribunal for all the States and Union Territories except the State of U.P.. In the meanwhile the Lucknow Bench of the Allahabad Bench vide judgment dated 31.05.2019 in PIL Civil No. 6800 of 2019 in Oudh Bar Association quashed the proposal dated 15.03.2019

of State of U.P. and directed for consideration of the earlier proposal dated 21.02.2019 for constitution of State Bench at Lucknow with 20 Area Benches at different locations.

It has further been submitted that subsequently the Allahabad Bench vide order dated 19.07.2019 in Writ Tax No. 655 of 2018 has passed the following order:-

"From a bare reading of the provision of the Act itself it is clear that it is not in the domain of the State Government to make a recommendation for deciding the place of the State Bench of the Tribunal. The role of the State is confined to determine the place of area benches.

Insofar as the determination of location of the State Bench is concerned, it remains in the domain of the Central Government for which the matter is under consideration before the Central Government.

Insofar as the judgement dated 31.05.2019 of the Lucknow Bench in PIL (Civil) No.6800 of 2019 (Oudh Bar Asso. High Court, Lko. Thru General Secretary & Anr. vs. U.O.I. Thru Secy. Ministry of Finance & Ors.) is concerned, it appears that the aforesaid provisions have not been considered at all, hence, prima facie the judgement appears to be bereft with non-consideration of the above facts. The Central Government shall proceed in accordance with Section 109 (6) of C.G.S.T. Act, 2017"

It has further been averred that in the said affidavit that department has approached the Ministry of Law & Justice to file an SLP in the Hon'ble Supreme Court of India against the judgment of the Allahabad High Court, Lucknow Bench. It seems that the proposal is still pending before the Ministry of Law & Justice and no decision in this regard has been taken. They have further recorded that some order has been passed by the Madras High Court, which admittedly pertains only to the conditions of service of the members of the GST, Tribunal. The question was put forth to the learned Standing Counsel appearing on behalf of the Government of India as well as to the Senior Officer appearing before this Court as to indicate any legal impediment in constitution of the GST, Appellate Tribunal in the State of U.P.? They could not point out any order which restrains them from constituting the same. Surprisingly even in the affidavit filed before this Court today there is no mention as to within what period of time the said proposal for constitution of the GST, Appellate Tribunal would be considered by the

GST, Council and appropriate decision taken thereon.

According to the affidavit filed by the Government of India the only reason for non constitution of the GST, Appellate Tribunal is with regard to its location. It has been stated that they have proposed to file SLP before the Apex Court against the judgment of the Lucknow Bench passed in PIL Civil No. 6800 of 2019 which was decided on 31.05.2019, nearly seven months back and it has also not been indicated as to whether such proposal has been accepted in the Ministry of Law & Justice.

From the material disclosed in the affidavit, which according to us is extremely unsatisfactory and does not address the issues which were directed by this Court to be addressed, inasmuch as there is not a whisper as to within what period of time the GST, Council would create GST Appellate Tribunal for the State of U.P. and the Government would notify the same.

It is needless to say that it is imperative that this issue be taken up by the Central Government as well as the GST Council, as expeditious as possible, as they are under the legislative mandate to create a GST Appellate Tribunal in the State of U.P. and they cannot shirk from their statutory obligation in this regard.

Numerous judgment and order in this regard has been passed, but despite a direction for appearance of an Officer of the Government of India not below the rank of Additional Secretary, Ministry of Finance, Government of India, New Delhi. Mr. Mahendra Ranga, Principal Commissioner, CGST, Lucknow is present today who also states that he has no instructions in this regard and therefore cannot make any statement with regard to the date or time for constitution of the GST, Appellate Tribunal, in the State of U.P.

The High Court in exercise of power under Article 226 of the Constitution of India can pass appropriate orders for compliance of the statutory provisions contained in various enactments. In the present case a provision has been made in Section 109 for creation of the GST, Appellate Tribunal, but the reasons best known to the respondents only for the State of U.P. said Appellate Tribunal has not been constituted.

The persons aggrieved by the order of the First Appellate Authority have no other remedy than to file a writ petition before this Court, in absence of GST, Appellate Tribunal.

The counsel for the petitioner has vehemently urged that it is the duty of the State to see that all authorities and tribunals are

constituted before imposition of Tax. An assessee cannot be left remediless despite statutory safeguards having been provided by the legislature. The machinery provisions of a taxing statute are as important as the charging sections, and the State cannot implement the charging sections keeping the machinery provisions in limbo.

Learned Standing Counsel appearing for the State of U.P, learned counsel appearing for the Union of India, as well as the Commissioner GST, Lucknow have requested that one more opportunity be given to seek clear instructions and informed this Court as to within what time GST, Appellate Tribunal for State of U.P. would be constituted.

Looking to the aforesaid, in the interest of justice it is hereby provided that let this Court be informed by means of an affidavit filed by the Secretary, Ministry of Finance, Government of India, New Delhi as to within what period of time the GST, Appellate Tribunal for the State of U.P. would be constituted. Let an affidavit be filed by the next date of listing.

List this case on **25.02.2020**, on which date the Additional Secretary, Ministry of Finance, Government of India, New Delhi shall appear before this Court for assistance.

Order Date :- 16.1.2020

A. K. Singh