

Court No. - 21

Case :- WRIT TAX No. - 765 of 2018

Petitioner :- M/S Ashoka Enterprises

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Nishant Mishra, Vipin Kumar Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Krishna Murari, J.

Hon'ble Ashok Kumar, J.

In compliance of our order dated 09.05.2018 Smt. Kamni Chauhan Ratan (respondent no. 2) Commissioner of State Tax, U.P. Goods & Service Tax, Lucknow and Sri Raj Kumar Kureel (respondent no. 3) Assistant Commissioner, State Tax, Mobile Squad, Unit-III, Noida are present in person.

Sri Manish Goel, learned Additional Advocate General points out that the petitioner has been described as M/s Ashoka Enterprises through its proprietor Sri Fazil. The affidavit is also sworn by Sri Fazil describing himself to be sole proprietor of the firm. Vakalatnama has also been executed by Sri Fazil describing himself to be proprietor of the firm whereas the representation/application dated 02.05.2018 made before respondent no. 3 has been signed by Sri Ashok Kumar Agarwal. Similarly undated application filed as Annexure-8 to the writ petition in pursuance of the show cause notice under Section 129 (3) of the U.P. Goods & Service Tax Act, 2017 (in short 'UPGST Act, 2017') goes to show that it has been signed by Sri Ashok Kumar Agarwal, proprietor of firm M/s Ashoka Enterprises, resident of E-19, Sector-7, Noida-I.

Thus, there is contradiction in the pleadings in respect of the description of the petitioner and it is not clear that Sri Fazil is the actual proprietor of the firm or Sri Ashok Kumar Agarwal.

Sri Manish Goel, learned Additional Advocate General further pointed out paragraphs 11 and 12 of the writ petition wherein averments have been made in respect of the generation of the E-way bill and producing the same before respondent no. 2 on the same date and submission of reply to the show cause notice under Section 129 (3) of the Act, which according to the pleadings made in the paragraphs, has not been issued at that point of time and the reply was obtained under threat and coercion are sworn on the basis of the record which totally falsifies the averments in the said paragraphs.

On 09.05.2018, we required the presence of respondent 3 to explain his conduct on the allegations made against him in the

pleadings and the respondent no. 2 to suggest the ways and means to remedy the situation but it appears that we were misled by the petitioner and at the time of first hearing neither the fact had been pointed out by learned Standing Counsel appearing for the State-respondents nor we noticed the same and without noticing the fact we required the respondents no. 2 & 3 to be present in person.

Sri Manish Goel, learned Additional Advocate General has also placed before us the previous record of the assessee for the period 1999 till 26.03.2018 showing that penalty has been levied for evasion of the tax against the petitioner firm at least 25 times which goes to show that he is a habitual evader of tax.

Let a counter affidavit be filed on behalf of the respondents bringing all these facts on record within ten days. Rejoinder affidavit may be filed within a week thereafter.

Put up in Additional Cause List on 29.05.2018.

Personal appearance of both the officials on future date is exempted. In case, allegations and anomalies pointed out by Sri Manish Goel, learned Additional Advocate General are found to be established after exchange of affidavits, the question of imposing heavy exemplary costs and proceedings for initiation of contempt upon the petitioner shall be considered on the next date of hearing.

Order Date :- 14.5.2018

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