A.F.R.

Court No. - 4

Case :- WRIT TAX No. - 702 of 2017

Petitioner :- M/S Metro Institutes Of Medical Sciences Pvt. Ltd.
Respondent :- State Of U.P. & 5 Others
Counsel for Petitioner :- Rahul Agarwal
Counsel for Respondent :- C.S.C.,A.S.G.I.

Hon'ble Abhinava Upadhya, J.
Hon'ble Ashok Kumar,J.

Heard Sri Rahul Agarwal assisted by Sri Varad Nath and Miss. Archi Agarwal learned counsels for the petitioner. Sri V.K.S. Raghuvanshi, appeared for the respondent no.4, Sri C.B. Tripathi for the respondent nos.1 and 5 and Sri Arvind Kumar Kushwaha holding the brief of Sri Prem Shankar Prasad, learned counsel for the respondent nos. 3 and 6.

With the consent of the learned counsels appearing on behalf of the respective parties, the present writ petition is disposed of finally without calling for the counter affidavit as there is no disputed facts involved in the present case.

The brief facts of the case are that the petitioner is a company incorporated under the Companies Act, 1956 and is engaged in the business of providing health care services. The petitioner company is also engaged in the business of supplying taxable goods and services. The petitioner company was registered as a Trader under the provisions of U.P. Trade Tax Act since 15.9.1997. The said registration under the U.P. Trade Tax Act was continued under the provisions of U.P. Value Added Tax Laws under the U.P. VAT Act. The assessing/ registering authority of the petitioner company has issued TIN number. The petitioner company has also been registered under the provisions of Central Sales Tax Act, 1956.

With effect from 1.7.2017 the new law has been introduced namely Goods and Service Tax Act (GST) and in the said Act namely GST, the U.P. VAT Department was authorised by the Goods and Service Tax Network (GSTN) for providing an ID and a Password to the existing dealers and migrating them from existing TIN numbers to new GST numbers.

The Commercial Tax Department of the State of U.P. has issued the letter to the petitioner on 9.12.2016 by which the petitioner has been allotted a provisional ID and a Password for migration to the GSTN. The said letter dated 9.12.2016 indicates that the PAN mentioned against the petitioner was being AAFPL6351C. The aforesaid PAN number was not the PAN number of the petitioner company as such was the PAN number of the Director of the petitioner company namely one Mr. Purushottam Lal. According to the petitioner the correct PAN number of the petitioner company is AAACU4178N. Since the incorrect PAN number is mentioned by the Commercial Tax Department, State of U.P., the petitioner has requested that a correct and complete provisional ID and Password with the correct PAN be made available to the petitioner company. In this regard, the petitioner was directed to update the PAN details on the website of the Commercial Tax Department, State of U.P. It is stated by the petitioner that on 4.3.2017, the petitioner updated its PAN details on the website of the Commercial Tax Department, State of U.P. and the same was acknowledged by the Commercial Tax Department by issuing a receipt dated 4.3.2017 itself.

The petitioner has made a complaint, with the Commercial Tax Department, State of U.P., for re-issue of GST provisional ID and Password with the correct PAN. According to the petitioner inspite of lapse of significant time and period, the provisional ID and Password matching with correct PAN number has not been supplied to the petitioner by the Commercial Tax Department, State of U.P. and therefore, the petitioner has made an inquiry on the website of the Commercial Tax Department, and thereafter it has been gathered by the petitioner that the Commercial Tax Department had forwarded the request of the petitioner to the GST Network for re-preparation of the ID. As mentioned, the petitioner thereafter has checked its registration status on the GST Website and from there it is found that the same has been issued being the provisional ID with the correct PAN number. According to the petitioner the number of the provisional ID has been mentioned as 09AAACU4178N1ZQ.

The grievance of the petitioner is that till date though the provisional ID has been issued but the petitioner has not been issued a password corresponding to the provisional ID which has been allotted to the petitioner. According to the petitioner the return for the month of July 2017 was required to be filed but before the date of filing the return the petitioner has moved an application dated 25.8.2017 on the GST Portal, through its counsel and the petitioner's counsel wrote to the GSTN help desk requiring them to provide a Password for its provisional ID so that the petitioner to complete the migration process, pay its taxes and accordingly file GST return for the month of July 2017. The request of the petitioner appears to have been processed and therefore, an automatic email was received by the petitioner in which it has been stated that the request of the petitioner had been received and assigned a request ID of SR 1133968. It is further stated in the reply that the issue reported upon by the petitioner was being worked on and update would be provided to the petitioner shortly.

According to the petitioner that even after the aforesaid assurance till date the petitioner has not received any further email of its complaint registered with the request ID SR 1133968. According to the petitioner the petitioner company has not being given password corresponding to the new provisional ID issued to the petitioner by the Department. Since the password has not been issued to the petitioner the petitioner is unable to complete the process of migration so as provided under Section 139 of GST Act read with Rule 24(1) of the CGST Rules, 2017.

Section 139 of the GST Act provides the procedure for migration of existing tax buyers. For ready reference the provisions of Section 139 which came w.e.f. 22.6.2017 is quoted hereinbelow :

> *"Section-139. (1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.*
>
> *(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.*
>
> *(3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24."*

Rule 24 (1) of CGST Rules, 2017 provides the migration of persons registered under the existing law. For ready reference Rule 24(1) (a) and 24(1)(b) and the proviso of the said Rule 24 is quoted hereinbelow :

> *"Rule-24. (1)(a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enroll on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.*
>
> *(b) Upon enrollment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal:*
>
> ***Provided** that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act."*

According to the petitioner the petitioner is unable to complete the process of migration under the GST Act and CGST Rules mentioned hereinabove. The petitioner's contention is that without a provisional ID and a Password corresponding to the correct PAN number of the petitioner company, the petitioner cannot complete the process as required. The contention of the petitioner is that in the absence of the migration, the petitioner cannot file returns or pay taxes and discharge its GST liability from July 2017 onwards. The petitioner has further submitted that the petitioner also cannot generate the E-way bill which are required for importing goods from outside the State of U.P. into the State of U.P. Learned counsel for the petitioner has further submitted that in absence of the migration the petitioner company is also unable to access the various online services which are available on the GST website.

According to the petitioner the petitioner company is doing its regular business after the enforcement of the GST Act and after getting its provisional ID while rendering health care services and other taxable supply of goods and services. It is submitted by the counsel for the petitioner that in order to get the benefit of input credit by the tax paid by it on its purchases and its sales of goods, the petitioner had to provide its GST number to its seller and also to certain purchasers. It is further submitted by the petitioner's counsel that the petitioner requires to complete the migration process for getting the benefits on the closing stock available with it as on 30.6.2017. The GST Act requires a dealer has to submit monthly returns and has to deposit due and legitimate tax thereon. In absence of provisional ID and Password and correct PAN number under the GST Act a dealer cannot submit any return in form GSTR 3-B, GSTR-1 as also cannot deposit its tax.

According to the petitioner there is no fault of the petitioner company for the provisional ID and Password corresponding to the provisional ID not being issued to the petitioner by the GST Network/ concerned respondent authority. Though the petitioner is approaching the appropriate authorities by requesting and writing the letters for supplying of the password well within the due date for filing its return but no heed has been paid by the authority concerned. The respondents are obliged to supply the password corresponding to the provisional ID to the petitioner company and has mandatory on their part to supply the same. Section 49 of the CGST Act provides that the tax has to be deposited by the due date and in the event of failure on the part of a dealer to deposit the tax, there would be liability of payment of interest under Section 50 of GST Act, which is enforceable automatically. It further provides for penal proceedings.

On inquiry made by the petitioner the petitioner has been informed on the GST Portal that the petitioner will not be allowed to deposit its tax and further to file the returns unless the late filing penalty and interest are also to be deposited. The contention of the petitioner is that there is no fault of the petitioner but on account of laches at the hands of the competent authority the petitioner company may suffer adverse financial consequences which may be arbitrary.

We have heard the learned counsel for the parties.

In the view of the aforesaid facts, we hereby direct the concerned respondent authority to immediately issue a password to the petitioner company for completing migration process on the GST Portal for upload its returns and to deposit the due tax. It is further directed that the concerned respondent authority will allow the petitioner to complete migration to GST upon the receipt of such password as such issued to the petitioner company, in accordance with law.

With the aforesaid direction, the writ petition is allowed.

Order Date :- 11.10.2017
S.S.

(Ashok Kumar, J.) **(Abhinava Upadhya, J.)**