

Court No. - 38

Case :- WRIT TAX No. - 660 of 2020

Petitioner :- M/S Ratan Industries Limited

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vishwjit

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

Counter affidavit filed today is taken on record.

The present petition has been filed by the petitioner challenging the order dated 24.1.2019 passed by the respondent no. 3, whereby a tax demand of Rs. 91,450/- and interest thereon has been passed as per GST DRC-07 as well as the order dated 27.7.2020 passed by the Appellate Authority under Section 107 of the GST Act, whereby the appeal filed by the petitioner has been dismissed on the grounds of limitation.

The petitioner claims to be carrying on the business of manufacture and sale of the auto parts and is duly registered under the GST Act. The petitioner claims that he is purchasing raw material for manufacturing of the goods and are eligible for input tax credit. The petitioner claims to have submitted the details as are required and the amount of tax was paid after deducting the ITC. The petitioner claims that he came to know on 15.12.2019 that some orders have been passed as per DRC-07 dated 24.1.2019 by the respondent no. 3 in purported exercise of powers under Rule 142(5) of the GST Rules.

The main allegation of the petitioner is that prior to passing of the order of demand, no show cause notice was ever served upon the petitioner and in fact no order passed by the respondent no. 3 was also ever served upon the petitioner, however, against the demand notice the petitioner preferred an

appeal and the said appeal was also dismissed as being beyond the prescribed period of limitation under Section 107 of the Act.

In view of the specific contentions raised by the petitioner with regard to the non-service of show cause notice and non-furnishing of a reasoned order, this Court had called for a counter affidavit from the respondents. A counter affidavit has been filed, wherein a show cause notice has been annexed as Annexure-4, however, in para 9 of the counter affidavit it has been admitted that on account of clerical inadvertence, the show cause notice was sent on the wrong E-mail address. In respect of the demand notice, only a summary of the order dated 24.1.2019 has been filed as Annexure-5 and no order giving the reasoning for levy of demand has even been filed in the counter affidavit.

In view of the stand taken by the respondents in the counter affidavit, it is clear that show cause notice was never served upon the petitioner as well as the reasons for quantification of the demand has also never been served upon the petitioner. In view thereof, it is clear that the statutory provisions as well as the principles of natural justice have been clearly violated. Service of the show cause notice at a wrong E-mail address is neither contemplated under the Act nor can it be deemed to be a proper service under the Act. As no show cause notice has ever been served, the petitioner never had any occasion to file its reply and thereafter not serving a copy of the reasoned order quantifying the demand is clearly erroneous.

The present petition has been filed as the Tribunal contemplated under the GST Act has not been created and the petitioner argues that in the absence thereof he cannot be left remedy less, as such he approached this Court.

A perusal of the orders passed and the pleadings exchanged,

make it clear that the orders passed are wholly arbitrary and contrary to the manner of passing of the order, as prescribed under the Act. There is no hesitation in holding that the orders passed against the petitioner are completely in violation of principles of natural justice.

In view thereof, the writ petition is **allowed**. The order dated 24.1.2019 as well as the order dated 27.7.2020 passed by the respondent no. 3 and respondent no. 2, respectively, are set aside.

As the show cause notice has now been served upon the petitioner and is contained in Annexure-4 of the counter affidavit, the petitioner shall file his reply to the said show cause notice within a period of four weeks from today and the respondents shall be at liberty to pass fresh orders, after giving an opportunity of hearing, in accordance with law.

Copy of the order downloaded from the official website of this Court shall be treated as certified copy of this order.

Order Date :- 17.12.2020

S. Rahman