

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 Sri Rahul Agarwal, learned counsel for the petitioner in this petition as well as Sri Nishant Mishra, Ms. Deksha Rastogi, Ms. Pooja Talwar, Sri Murari Mohan Rai, Sri Krishna Agarwal, Sri Subham Agarwal and Sri Praveen Kumar, learned counsels for the petitioners in other connected writ petitions. Sri Krishna Ji Shukla and Sri Anant Kumar Tiwari, learned counsels for Union of India and Sri Bipin Kumar Pandey, learned Standing Counsel for State of U.P. are present.

In this bunch of writ petitions challenge has been made to the orders passed by the appellate authority under Section 107 of the U.P. Goods and Service Tax Act, 2017 (*hereinafter referred to as "the GST Act"*).

It is an admitted position that all the orders which have been passed under the GST Act by the appellate authority concerned are appealable under Section 112 of the GST Act before the Goods and Service Tax Tribunal (*hereinafter referred to as "the GST Tribunal"*).

Learned counsels for the petitioners have submitted that due to non constitution of the GST Tribunal, the petitioners are being forced to take recourse of filing writ petitions before this Court under Article 226 of the Constitution of India.

This Court taking cognizance of these writ petitions, by means of order dated 18th September, 2019, recorded that learned Central Government Counsel had brought on record a copy of the communication dated 07.09.2019, issued by the Director, GST Council Secretariat, wherein it was mentioned that meeting of the GST Council is proposed to be held on 20th September, 2019, by way of Agenda Item (ii). The Council may consider constitution of regional and area Benches of GST Tribunal in the State of Uttar Pradesh in the said meeting. In the light of submission made by the counsel for the Union of India,

the case was listed on 16th October, 2019, with direction to the learned counsel for the Union of India to inform the Court as to what decision has been taken by the GST Council in its next meeting.

The bunch of writ petitions was again listed on 16th October, 2019 and on that date it was informed by Sri Krishna Ji Shukla, learned counsel for the Union of India that he had written letter to the competent authority but no instructions have been given to him regarding the out come of the meeting of the GST Council.

On 16.10.2019, this Court observed that on the basis of assurance given by Sri Shukla that the matter would be resolved by the appropriate authorities at the earliest, and three weeks further time was granted to the counsel for the Union of India to obtain instructions and file a proper affidavit with regard to the action taken for constitution of benches of GST Tribunal for the State of Uttar Pradesh.

The bunch of cases was again listed on 13.11.2019, on which date the Court took notice of various orders passed by this Court and recorded that no compliance has been made of the same. On the request made by Sri Shukla, learned counsel for the Union of India, again three weeks time was granted to file an affidavit of authorised/responsible officer of the Union of India, disclosing the steps taken by the GST Council in respect of constitution of benches of GST Tribunal in the State of Uttar Pradesh.

Mention of the aforesaid orders is necessary to indicate the manner in which the authorities of Union of India are responding to the directions made by this Court in various petitions and judgment and orders passed therein regarding constitution of GST Tribunal in the State of Uttar Pradesh.

When the matter has been taken up today, Sri Krishna Ji Shukla, learned counsel for Union of India has informed the Court that by means of letter dated 22.12.2019, he had duly informed the Joint Secretary, Ministry of Finance, Department of Revenue, New Delhi about the orders passed in this bunch of writ petitions and sought relevant information so that an affidavit as directed by the Court can be filed in respect to the stage of constitution of benches of the GST Tribunal in the State of U.P.

Sri Shukla, learned counsel for the Union of India has further submitted that several letters have been sent by him as well as Sri Anant Kumar Tiwari, to the authorities concerned. They

have also produced copies of letter dated 13.12.2019, addressed to the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi, annexing all the orders passed by this Court. Even today no affidavit has been filed and the learned Standing Counsel does not have any instructions in the matter.

It is needless to say that GST Tribunal has been provided for under Section 109 of the GST Act, giving forum to the aggrieved persons to seek redressal of their grievance before the GST Tribunal against the orders passed by the first appellate authority. The GST Act came into force on 01.07.2017 and even after expiry of more than two and half years, it is very surprising and anguishing to note that till date benches of GST Tribunal have not been constituted in the State of U.P. despite various observations/directions made by this Court by means of interim orders and final judgments passed by this Court at Allahabad and Lucknow.

It is also surprising to note that despite repeated orders of this Court and communication sent by learned counsel for Union of India neither instructions have been provided nor any information regarding establishment of benches of GST Tribunal has been provided till date. It is informed that no response is being given to various communications sent to the authorities of the Union of India by their Standing Counsels.

Learned counsels for the petitioners have informed that in nearly all the States, GST Tribunal has been constituted and notification in this regard has been issued few months back but surprisingly no such notification has been issued for the State of Uttar Pradesh.

Due to non constitution of the GST Tribunal, number of writ petitions are being filed in the High Court thereby further burdening the Court.

In the light of above, this Court has no option but to issue direction for personal appearance of competent authority before the Court. Therefore, officer of the Government of India not below the rank of Additional Secretary, Ministry of Finance, Government of India, New Delhi shall appear before this Court on 16.01.2020 for assistance, on which date the Officer is required to inform the Court as by which date the GST Tribunal would be constituted in the State of U.P.

The learned counsels for the petitioners in the respective writ petitions undertake that they will serve the Secretary, Ministry of Finance, Government of India about this order through e-

mail and learned Standing Counsel appearing on behalf of Union of India shall also communicate this order to the authorities concerned and ensure his presence on 16.01.2020.

Let the bunch of cases be listed on 16.01.2020.

Order Date :- 8.1.2020

A. Verma

(Alok Mathur, J.)