

Court No. - 38

Case :- WRIT TAX No. - 661 of 2020

Petitioner :- M/S Singh Traders

Respondent :- Additional Commissioner Grade-2 And 2 Others

Counsel for Petitioner :- Suyash Agarwal, Ankur Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

Present writ petition has been filed for the following reliefs:

"I. Issue a Writ, Order or Direction in the nature of Certiorari quashing the order dated 30.11.2019 passed by Respondent No. 1 in GST Appeal No. 58 of 2019, A.Y. 2018-201-, filed by the Petitioner (Annexure No. 4).

II. Issue a Writ, Order or Direction in the nature of Mandamus directing Respondent No. 1 to hear and decide the appeal of the Petitioner, No. 58/2019 A.Y. 2018-2019 on merits."

The contention, in brief, is that the petitioner is registered dealer having a valid registration. The petitioner alleges that the Respondent No. 2 passed an order dated 15.3.2018 under Section 129 (3) of the Uttar Pradesh Goods and Services Tax Act, 2017 (in short 'the Act') against the petitioner on the grounds that the goods were not accompanied by the requisite E-way Bill-01 and proceeded to determine tax and penalty of Rs. 3,03,660/-. Petitioner alleges that, aggrieved against the said order dated 15.3.2018, he preferred an appeal being Appeal No. 58/2019 A.Y. 2018-2019 before the Respondent No. 1. It is claimed by the petitioner that the petitioner had obtained a certified copy of the order dated 15.3.2018 on 10.7.2019 and therefore, the appeal was filed on 12.7.2019. It is alleged that the order dated 15.3.2018 was served on the driver of the truck in question and was never served upon the petitioner, which is against the mandate of Section 169 of the the Act. The Respondent No. 1 vide its order dated 30.11.2019 dismissed the appeal on the ground of limitation as prescribed under Section 107 (1) and 107 (4) of the the Act.

The contention of the counsel for the petitioner is that admittedly the copy of the order was served upon the driver of the truck, who, by no stretch of imagination, can be termed as representative of the petitioner and thus, starting point of limitation should have been from 10.7.2019, the date on which the petitioner obtained the copy of the order against which the appeal was preferred. The petitioner has placed reliance upon a judgment of this Court dated 10.12.2018 passed in **Writ Tax No. 1388 of 2020 (M/s SS Patel Hardware Vs.**

Commissioner, State G.S.T. and 2 others) whereby this Court had decided the writ petition holding that the service of the order on the driver of the truck cannot be deemed to be a valid service and thus, the period of limitation would commence from the day when a certified copy/copy of the order is made available to the petitioner.

Counsel for the petitioner, on the strength of the said judgment, states that the writ petition be allowed and the impugned order be set aside with a direction to the appellate authority to decide the appeal on merits in accordance with law.

Section 169 of the Act provides for manner of service of notice, decision, order or summons, which is quoted as under:

"169 - Service of notice in certain circumstances

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved."

A perusal of the impugned order clearly reveals that service on the driver would not fall within any of the category specified from the Clause a to f of Section 169 (1) of the Act. Thus, I have no hesitation in holding that the order impugned in the present writ petition is wholly arbitrary, illegal and contrary to the mandate of Section 169 of the Act. Accordingly, the order dated 30.11.2019 is set aside. The appellate authority is directed to hear and decide the GST Appeal No. 58 of 2019 A.Y. 2018-2019 in accordance with law without going into the question of limitation on merits. The appellate authority shall decide the appeal as expeditiously as possible.

The writ petition is allowed in terms of the said order.

Order Date :- 1.12.2020

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