



Court No. - 3

Case :- WRIT TAX No. - 414 of 2021

Petitioner :- M/S V.S. Enterprises

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

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Naheed Ara Moonis,J.

Hon'ble Saumitra Dayal Singh,J.

Heard Shri Shubham Agrawal, learned counsel for the petitioner; Shri Manu Ghildyal, learned counsel for the Revenue and; learned Standing Counsel for the State.

Challenge has been raised to the three orders, all dated 09.06.2021 passed by the respondent nos. 2 and 3 (annexed as Annexure nos. 3, 6 and 10 to the writ petition).

Briefly, it has been submitted that the respondent no. 2 issued two notices under Section 74 of Uttar Pradesh Goods and Services Tax Act, 2017 (hereinafter referred to as 'the Act') being notices dated 22.09.2020 and 22.12.2020 for the period September 2017 to December 2017 and July 2017 to March 2018 respectively. Another notice dated 09.04.2021 is stated to have been issued under Section 74 of the Act by respondent no.3 for the period November 2017. Arising therefrom, three adjudication orders (all dated 09.06.2021), came into existence, that have been challenged in the present petition on account of the fact that for one tax period and for one dispute, there can only be a single adjudication order.

Upon such submissions, writ petition was entertained by order dated 14.7.2021. It reads as below:

"Heard learned counsel for the petitioner and learned Standing Counsel for the responders.

Submission of learned counsel for the petitioner is that under scheme of the UP GST Act only one order of adjudication could have been passed for a tax period. In the present case, three notices have been issued for

overlapping period which are wholly without jurisdiction. Simultaneously, orders have been passed in all three cases by two different authorities which again are wholly without jurisdiction. Reference has also been made to the Government Notification dated 01.05.2021. He submits that in any case no order could have been passed till the date to furnish reply as extended by the aforesaid notification had lapsed.

Matter requires consideration.

Sri C.P. Tripathi, learned Standing Counsel prays for and is granted 10 days time to complete the instructions.

Put up in the additional cause list on 29.07.2021.

In the meanwhile, no coercive measures shall be adopted against the petitioner in pursuance to the impugned order dated 09.06.2021 (Annexure nos. 3, 6 and 10 to the writ petition) passed by the respondent nos.2 and 3."

Today, on instructions, Shri Ghildyal submits that on account of the *bona fide* mistake committed, three orders came into existence, however, it is respondent no.2 who had and continues to have jurisdiction to make proper adjudication.

In view of the fair statement made by learned counsel for the Revenue, no useful purpose would be served in keeping the present petition pending or calling for counter affidavit.

Undisputedly, three periods for which the orders had been passed are overlapping. Notice dated 22.12.2020 was issued by respondent no.2 for the period July 2017 to March 2018. It covers the entire period and dispute being sought to be adjudicated in the other two notices as well.

At the same time, we find that by notice dated 22.12.2020, next date fixed was 05.01.2021 but the petitioner could not participate in the same on account of the spread of pandemic COVID-19. Also, in that regard, it has been brought to our notice that realizing the difficulties from the spread of pandemic COVID-19, the Government had itself issued an order dated 01.05.2021 extending the period to submit reply and responses, up to 30.05.2021. Subsequently, it was extended up to

30.06.2021. In light of that fact, the order dated 09.06.2021 is clearly an *ex-parte* order, which has been passed without allowing due opportunity of hearing to the petitioner.

In view of the above, present writ petition is **disposed of** with the following terms:

(i) the orders dated 9.6.2021 passed by respondent no.2 for the period September 2017 to December 2017 and the order dated 9.6.2021 passed by respondent no.3 for the period November 2017 are quashed.

(ii) So far as the order dated 9.6.2021 passed by respondent no. 2 for the period July 2017 to March 2018 is concerned, the same arises from the proceedings initiated by notice dated 22.12.2020. That order dated 9.6.2021 is set aside and the matter remitted to respondent no.2 to pass a fresh adjudication order after affording the petitioner reasonable opportunity of being heard. However, it is provided that the petitioner shall file his reply to the notice dated 22.12.2020 within a period of one month from today, not later than 31 August 2021. Further proceedings may be conducted and concluded strictly in accordance with law.

Order Date :- 29.7.2021
Prakhar