

Court No. - 46

Case :- WRIT TAX No. - 1023 of 2023

Petitioner :- M/S Vivaan Enterprises

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Syed Aftab Husain Rizvi,J.

Petitioner had a Trading unit which was duly registered with the GST. The registration was cancelled on 22.10.2019 with effect from 14.08.2019. At the time of cancellation of registration, there was no tax liability existing against the petitioner. It appears that subsequent, in point of time, proceedings were initiated against the petitioner, in respect of transactions undertaken prior to 14.08.2019, after service of notice on the GST portal which was intimated to the accountant of the firm, while e-mail of the accountant was created when he was working for the firm.

Learned counsel for the petitioner submits that once the firm itself was de-registered, the authorities were expected to serve notices upon the petitioner and after such service of notice alone, the proceedings could have progressed further. It is stated that notice sent on the e-mail of the accountant, created prior to de-registration of firm cannot be construed as service of notice. It is also submitted that the order impugned has come to the notice of the petitioner only in 3rd week of August, 2023.

Learned counsel for the petitioner places reliance upon an order passed by this Court in Writ Tax No.809 of 2023 on 31.07.2023, which is reproduced hereinafter:-

"Civil Misc. Amendment Application No. 2 of 2023:

1. Heard.
2. This is an amendment application seeking amendment in prayer clause of the writ petition by deleting Prayer Nos. (i) and (ii).
3. The application is formal in nature, not opposed, allowed.
4. Counsel for the petitioner/applicant is permitted to carry out necessary amendment during the course of the day.

Order on Writ Petition:-

1. Heard Shri Shubham Agarwal, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. Challenge in this writ petition is to an order dated 19.4.2023 passed by the respondent No. 2 whereby petitioner was directed to deposit a sum of Rs.63,12,126/-.
3. Learned counsel for the petitioner submits that on 17.3.2023 petitioner was served with a show cause notice on GST Portal by the Assistant Commissioner, State Tax, Sector-8, Muzaffar Nagar fixing 17.4.2023 to deposit a sum of Rs.62,69,406/-. According to the petitioner, this notice was never served to him. He was not aware of any such proceedings and behind his back an order dated 19.4.2023 (Annexure-5 to the writ petition) was passed fixing liability of the petitioner to the tune of Rs.63,12,126/-.
4. Counsel for the petitioner submits that purpose of filing this writ petition would be served, if department give him fresh notice within 15 days from today and in turn, the petitioner would submit his reply. He further submit that while considering the reply of the petitioner, respondent-Authority may be directed to consider all aspects of the matters including the fact that petitioner has already closed his unit on 29.8.2019 and the fact of closure was duly intimated to the respondent No. 2 qua which respondent No. 2 has proceeded to cancel the registration of the petitioner.
5. Counsel appearing for the respondents have no objection to proposition put forth by the petitioner.
6. Without expressing any opinion on the merits of the case, petition is **disposed of** permitting the petitioner to approach before the respondent No. 2 and to obtain the fresh notice, within 15 days from today and in turn, petitioner would file the reply to the fresh notice within the stipulated time fixed by the respondent No. 2. While deciding the notice, an opportunity of personal hearing be also afforded to the petitioner.
7. In view of aforesaid facts and circumstances of the case, the order dated 19.4.2023 passed by the respondent No. 2 is hereby quashed."

Facts of the present case appear to be similar and in such circumstances, this petition can also be disposed of on above terms.

Sri Ankur Agrawal for the Department does not dispute the fact that the factual issues raised in this petition are similar to the petition already decided by this Court on 31.07.2023.

For the reasons and discussions held above, this petition also stands **disposed of** in terms of the order passed by this Court on 31.07.2023. The impugned ex-parte order dated 22.07.2021 stands **quashed**.

Order Date :- 13.10.2023

SP/-