

Chief Justice's Court

Case :- WRIT TAX No. - 1274 of 2023

Petitioner :- M/S Rameshwar Prasad Rajendra Prasad

Respondent :- Commissioner Cgst And Central Excise And Another

Counsel for Petitioner :- Pooja Talwar

Counsel for Respondent :- Amit Mahajan

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Heard Ms. Pooja Talwar, learned counsel for the petitioner and Shri Amit Mahajan, learned counsel for the respondent.

2. The challenge laid in this writ petition is to the show cause notice dated 14.7.2023 issued by the respondent No. 2 for the financial year 2018-19 as also to the entire proceedings undertaken by the respondents under Section 74 of the Central Goods and Service Tax Act, 2017 pursuant to the information forwarded by the Additional Director General, DDGI, Zonal Unit, Lucknow consequent to an inquiry initiated by the said authority in respect of the issuance of invoices from the non existing firms without actual supply of goods and wrongful availment and utilization of Input Tax Credit by these firms.

3. The challenge laid to the impugned show cause notice dated 14.7.2023 and the proceedings initiated consequent thereto, is on the ground that the mandatory provision of Rule 142 (1) (a) of the CGST Rules, 2017 have not been followed inasmuch as, the notice is not in the prescribed format FORM GST DRC-01 as provided under the aforesaid rule and also violates the requirement of issuing the summary in FORM GST DRC-02 and details of tax interest and penalty as ascertained in FORM GST DRC-01A.

4. It is further contended that the petitioner has been denied valuable right of cross examination on the basis of which adverse information has been received against the petitioner. It is contended that the issuance of the impugned show cause notice being defective, the notice is wholly without jurisdiction and entire proceedings initiated consequent thereto is void ab initio, non-est and liable to be interfered with in exercise of powers under Article 226 of the Constitution of India.

5. Shri Amit Mahajan, learned counsel appearing on behalf of the respondent, in opposition to the writ petition, submits that the challenge laid by the petitioner is to a mere show cause notice, which has been issued on collecting certain adverse information against the petitioner in respect of utilization of Input Tax Credit without actual supply of goods by fictitious firms. The petitioner in response to the notice may file objections, which may be considered by the Authority concerned. He submits that no interference is warranted by this Court.

6. We have heard the learned counsels for the respective parties and have perused the record.

7. Considering the entire controversy, we deem it appropriate to ***dispose of*** the writ petition by requiring the petitioner to file objections to the show cause notice within a period of two weeks from today before the respondent No. 2 along with certified copy of the order of this Court. On filing of the objections within the time allowed, it is expected that the respondent No. 2 would proceed to consider the objections after giving personal hearing to the petitioner and pass appropriate orders, strictly in accordance with law within the next 15 days.

Order Date :- 6.11.2023

Ravi Prakash

(Ashutosh Srivastava, J.) (Pritinker Diwaker, CJ)