

Court No. - 2

Case :- WRIT TAX No. - 167 of 2024

Petitioner :- M/S N.G.K Infra Ventures Pvt. Ltd. , Lko. Thru. Director Gaurav Deep Singh

Respondent :- State Of U.P. Thru. Prin. Secy. State Tax Deptt. Lko. And Another

Counsel for Petitioner :- Manoj Kumar Mishra,Piyush Tripathi,Shrikant Chaudhary

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Manoj Kumar Mishra, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. By means of present writ petition, the petitioner has challenged the order dated 18.12.2023, passed u/s 73 of U.P.GST/CGST/IGST Act, 2017 passed by the Deputy Commissioner, State Tax, Sector, Sector 12, Lucknow, whereby imposing tax for an amount of Rs.1,20,95,308.21, amount which includes the interest and penalty due upon the petitioner.

3. The petitioner submitted that he has assailed the said order on the ground that the same has been passed in violation of the statutory provision as well as no opportunity of hearing was given to the petitioner before passing of the said order.

4. Learned Standing Counsel on the other hand has opposed the writ petition. He has submitted that notice was duly served upon the petitioner who despite service of notice did not appear before the authority to defend the said notice and accordingly the impugned order has been passed assessing tax upon the petitioner. He further submits that the petitioner, in any case, has equally efficacious remedy of an appeal as provided u/s 107 of the UPGST/CGST Act and even according to the judgement of the Hon'ble Supreme Court in the case of **Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal** reported in **2014 (1) SCC 603**, it has been held matters involving tax where provision of appeal is provided, the assessee should be relegated to the said remedy.

5. Accordingly, this court is of the considered view that all the grounds raised by the petitioner assailing the said assessment can be duly considered by the appellate authority in appeal.

6. It is submitted by learned counsel for the petitioner that the amount of tax and penalty assessed is on the higher side and accordingly submits that he should be protected till such time appeal is filed. This court is of the view that all issues raised by the petitioner in the present writ petition can be adequately considered in appeal and accordingly the petitioner is relegated to his remedy of an appeal u/s 107 of the UPGST Act.

7. It is provided, in case such an appeal is filed within the next two weeks along with an application for interim relief, the appellate authority shall duly consider the said application and pass appropriate orders thereon, within 10 days thereafter in accordance with law.

8. Till appropriate orders on the stay application are passed by the appellate authority, no coercive action shall be taken against the petitioner.

9. It is made clear that on passing of the orders by the appellate authority, the protection granted by this court shall cease to have any effect.

10. With the aforesaid direction, the present petition is **disposed of**.

Order Date :- 25.6.2024

S.Chaurasia

(Arun Kumar Singh Deshwal, J.) (Alok Mathur, J.)