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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 151 OF 2019

• M/s Skipper Limited, 3A Loudon Street, Kolkata – 70017, West Bengal., through its Senior Manager (Taxation), Authorized Signatory- Ashok Kumar Gupta, S/o Late Shyamlal Gupta, Age 58 years, Senior Manager (Taxation), Skipper Limited.

… Petitioner

versus

1. State of Chhattisgarh, through- Secretary, Finance and Commercial Tax Department, Mahanadi Bhawan, Naya Raipur (CG)
2. Commissioner, Commercial Tax, GST Department, Raipur (CG)
3. Joint Commissioner, Commercial Tax, GST Department, Raipur (CG)
4. Assistant Commissioner, Circle-06, Raipur, GST Department, Raipur (CG)

… Respondents

For Petitioner	:	Ms. Aditi Singhvi, Advocate.
For Respondents	:	Mr. Ayaz Naved, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/12/2019

1. Challenge in the present writ petition is to the order dated 5.6.2018 (Annexure P-1) and order dated 4.6.2019 (Annexure P-2) passed by the Assistant Commissioner, State Tax, Circle-6, Raipur and the Joint Commissioner (Appeal), State Tax, Raipur, respectively.

2. Vide order dated 5.6.2018 (Annexure P-1) of the Assistant Commissioner, the petitioner has been penalized under Section 129 of the Chhattisgarh Goods & Service Tax Act, 2017. The penalty imposed against the petitioner was for an amount of Rs.1,52,212/-. The vehicle belonging to the petitioner was sealed wherein it was found that the transporter was not having the e-way bill which was mandatorily required to be carried out during the course of transportation.

3. The petitioner is said to have deposited the said penalty amount on 7.6.2018 before the authorities concerned under protest. Thereafter, the petitioner had preferred an appeal under Section 107 of the Chhattisgarh Goods & Service Tax Act, 2017 before the respondent no.3 i.e., Joint Commissioner (Appeal), Raipur. The office of the Joint Commissioner (Appeal) also vide its order dated

4.6.2019 (Annexure P-2) has decided the appeal of the petitioner affirming the order of penalty imposed by the Assistant Commissioner.

4. Contention of the petitioner is that the appellate authority has not given an opportunity of hearing to the petitioner before deciding the appeal. The petitioner referring to paragraph-3 of the order dated 4.6.2019 (Annexure P-2) submitted that the reading of the impugned order itself would reveal that on two occasions, that is on 8.10.2018 and again on 4.6.2019, notices were issued to the petitioner for hearing on the appeal and on both the occasions the notices have come back unserved, which itself is sufficient to infer that the notices were never served upon the petitioner enabling them to appear before the appellate authority.

5. Counsel for the petitioner thus prays that the matter may be remitted back to the appellate authority so that the petitioner gets an opportunity and the appellate authority can be convinced on the issue, as there are judicial pronouncements on identical set of facts in favour of the petitioner which has not been properly appreciated or brought before the authorities concerned.

6. This limited prayer that the petitioner has made is not objected to by the learned counsel appearing for the respondents.

7. Given the facts and circumstances of the case, particularly taking note of the finding of the appellate authority in paragraph-3 of the impugned order dated 4.6.2019 (Annexure P-2), it clearly reflects that the order passed by the appellate authority is an *ex parte* order and that the petitioner was never served with the notices issued so far as hearing on the appeal is concerned.

8. Under the circumstances, this Court is of the opinion that ends of justice would meet if the matter is remitted back to the Joint Commissioner (Appeal) for rehearing of the appeal on 23.12.2019 on its merits.

9. Counsel appearing for the petitioner undertakes that they shall remain present before the appellate authority on 23.12.2019.

10. Accordingly, the writ petition is allowed in part. The order dated 4.6.2019 (Annexure P-2) is set aside/quashed and the matter stands remitted back for being decided afresh after hearing the petitioner. The petitioner shall remain present before the appellate authority on 23.12.2019 on which date the Joint Commissioner (Appeal) shall decide the appeal after giving an opportunity of hearing to the petitioner and if at all the case has to be adjourned, the next date be given to the petitioner and the petitioner should note down the next date.

11. With the aforesaid observation, the writ petition stands allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

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