NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT No. 44 of 2020

M/s Sourabh Rolling Mills Pvt. Ltd. A Company Incorporated Under The Companies Act , 1956, Having Its Plant At Village Kanhera , Akholi Road, Urla Raipur Chhattisgarh, Through Its Director, Pankaj Agrawal, Son Of Lalit Kumar Agrawal , Aged About 37 Years, Resident Of A - 14 /3, Sector - 3 , Uday Society, Tatibandh, Raipur Chhattisgarh **---- Petitioner**

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Commercial Tax, Government Of Chhattisgarh, Mantralaya , Mahanadi Bhawan, Nawa Raipur , Atal Nagar , Naya Raipur , District Raipur Chhattisgarh
2. The Commissioner State Goods And Service Tax Department , Civil Lines, Raipur Chhattisgarh
3. The Joint Commissioner (Appeals) State Goods And Service Tax, Civil Lines , Raipur Chhattisgarh
4. The Adjudicating Authority (Assistant Commissioner) State Goods And Service Tax, Civil Lines, Raipur Chhattisgarh

--Respondents

For Petitioner	: Shri Ashish Surana, Adv.
For State	: Shri Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/02/2020

1. The Challenge in the present writ petition is to the order (Annexure P/1) dated 28.08.2019 passed by the Respondent No. 3 while deciding an appeal under Section 107(1) of CG GST Act, 2017.

2. The sole contention of the Counsel for the petitioner is that the petitioner had preferred an Appeal u/s 107(1) of CG GST Act, 2017 challenging the order passed by the Respondent No. 4 dated 04.08.2018 whereby the respondent No. 4 has imposed interest of Rs. 1,41,34,356/- under Section 50 of the CGST Act, 2017.

3. The contention of the Counsel for the Petitioner is that the petitioner had raised various grounds in the appeal and the Appellate Authority i.e. respondent No. 3 has quoted most of the grounds in

memo of appeal in the order itself as is evident from paragraph 2 of the impugned order. However, none of these grounds have been discussed or dealt with while passing the order in the appeal. The major ground which according to the petitioner, he had raised before the Appellate Authority is that the interest payable should be only after adjusting all input tax credited that the petitioner is entitled for and if that is adjusted, interest liability would be substantially reduced. However, this aspect has not been dealt with by the Appellate Authority in any manner nor has it been discussed.

4. The State Counsel on the other hand opposing this appeal referred to paragraphs 6 to 8 of the impugned order and submitted that the order passed by the Appellate Authority by itself is explanatory so far as liability on the part of the petitioner is concerned and thus, prayed for rejection of the petition.

5. Having heard the contention put forth on either side and on perusal of the impugned order it clearly reflects that it is true that the Appellate Authority has reproduced most of the grounds that the petitioner has raised in his appeal in the impugned order. However, when we look into the subsequent paragraphs of the impugned order, all that is reflected is that, the Appellate Authority has literally considered only the factual aspects of the case i.e. the date on which the petitioner was supposed to submit his return and the defaults on his part and the factual details in respect of statutory provisions as is required, in addition, the order also reflects the date on which the demand notices were issued to the petitioner. However, none of these paragraphs have the Appellate Authority

dealing with the specific objections and grounds that the petitioner /appellant has raised in the memo of appeal.

6. It is by now well settled position of law that the Appellate Authority while deciding the appeal is duty bound to consider the grounds of challenge. The Appellate Authority is also required to pass a reasoned speaking order, considering and dealing with those grounds. The impugned order in the instant case is that the order passed by the Appellate Authority seems to be more of an order passed by the Assessing Authority rather an order passed by the Appellate Authority. In the opinion of this Court, the appeal has not been justifiably decided and therefore, it deserves to be remitted back to the Appellate Authority to pass a reasoned speaking order dealing with the grounds raised in the appeal, challenging the order of Assessing Authority.

7. In case of East Coast Railway and Another Vs. Mahadev Appa Rao and Others with K. Surekha Vs. Mahadeo Appa Rao and Others (reported in 2010(7)SCC 678, the Supreme Court in very categorical terms has held that Arbitrariness in making of an order by an authority can manifest itself in different forms. Every order passed by a public authority must disclose due and proper application of mind by the persons making the order. Application of mind is best demonstrated by disclosure of mind by the authority making the order and disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable. In the absence of

reasons in support of the order it is difficult to assume that the authority had properly applied its mind before passing of the order.

8. Given the facts that the present petition stands allowed and the impugned order Annexure P/1 dated 28.08.2019 stands set aside/ quashed and the matter stands remitted back to the respondent No. 3 for deciding the appeal afresh specifically dealing with the grounds raised in the memo of appeal by the petitioner which finds place in the impugned order herein.

9. Needless to mention that while deciding the appeal afresh, respondent no. 3 shall give an opportunity of hearing to the petitioner again.

10. Accordingly, the writ petition stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
Judge

Jyotijha