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HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (T) NO. 45 OF 2020

• M/s Nutan Ispat and Power Private Limited, A Company incorporated under the Companies Act, 1956, having its Plant at Village Jarouda, Block Dharsiwa, Raipur, Chhattisgarh, through its Director, Saurabh Tola, Son of Rajesh Kumar Tola, aged about 25 years, resident of Flat No. 403, Sapphire Green Meadows, Daldal Deoni, Near Kalyan Gas Godown, Shanker Nagar, Raipur (CG)

… 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 (CG)
2. The Commissioner, State Goods and Service Tax, Department, Civil Lines, Raipur (CG)
3. The Joint Commissioner (Appeals), State Goods and Service Tax, Civil Lines, Raipur (CG)
4. The Adjudicating Authority (Assistant Commissioner), State Goods and Service Tax, Civil Lines, Raipur (CG)

… Respondents

For Petitioner	:	Mr. Ashish Surana, Advocate.
For Respondents	:	Mr. V.R. Tiwari, Addl. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

28/02/2020

1. Challenge in the present Writ Petition is to the order dated 6.9.2019 (Annexure P-1) passed by Respondent No.3 while deciding the Appeal under Section 107(1) of the Chhattisgarh Goods and Service Tax Act, 2017.

2. Learned Counsel for the Petitioner submits that the Appeal which the Petitioner had preferred was for challenging the Order passed by Respondent No.4 on 20.8.2018 whereby the tax liability of Rs. 1,94,79,059/- has been imposed upon the Petitioner with interest thereon to the tune of Rs. 31,60,213/- and also penalty of an amount of Rs. 19,47,906/- on the said amount.

3. The ground of challenge by the Petitioner-Company in the present Writ Petition is that they had raised various grounds in their Appeal and the Respondent No.3-Appellate Authority has also quoted most of these grounds in paragraph 2 of the impugned Order, however, none of these grounds have been discussed and dealt with while passing the final order in the Appeal. The major ground on which the Petitioner is harping upon is that the Appellate Authority has not considered the fact that the Petitioner had bonafidely submitted their return within time, however, because of technical error in the course of submitting of the return online, the return submitted by the Petitioner was reflected to be zero which was immediately informed to the authorities in the department.

4. Learned Counsel for the Petitioner further submits that they have established their bonafide by depositing the balance of amount immediately while submitting the return of the next month, which too was duly intimated to the authorities in the department, and as such the Petitioner never had any malafide intention or had ever tried to evade the payment of tax. Further contention of the learned Counsel for the Petitioner is that even while assessing the interest part also, the department should have made the assessment after taking into account the tax credit that the Petitioner was entitled for and if that amount would had been taken into consideration the liability on the interest part would had been substantially reduced so also the penalty amount. These aspects have not been dealt with or discussed by the Appellate Authority though in the impugned Order he has referred to these grounds which the Petitioner has raised in their Appeal.

5. Learned Additional Advocate General, on the other hand, opposing the present Writ Petition, refers to paragraphs 7 to 10 of the impugned Order and submits that the Order passed by the Appellate Authority is self-explanatory so far as the liability on the part of the Petitioner is concerned. Learned Additional Advocate General further submits that from perusal of the impugned Order it would reflect that on the date of hearing the Petitioner-Company did not mark their presence in any manner either through their representative or the lawyer through which they were represented, and as such the Petitioner cannot raise these grounds at a later stage before this Court by way of a Writ Petition.

6. Having heard the contentions put forth on either side and on perusal of the impugned Order, what clearly reflects is the fact that it is true that the Appellate Authority in the impugned Order has reproduced most of the grounds that the Petitioner has raised in their Appeal. However, when we look into the impugned Order, all what is reflected is that the Appellate Authority has literally considered only the factual aspects of the case, that is, the date on which the Petitioner was supposed to submit their return and the defaults on the part of the Petitioner and the factual details in respect of the 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's dealing with the specific objections and grounds that the Petitioner has raised in their memo of Appeal.

7. It is by now a 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 and speaking order considering and dealing with those grounds. The impugned Order in the instant case, which is the order passed by the Appellate Authority, seems to be more of an order passed by the Assessing Authority rather than an order passed by the Appellate Authority. In the opinion of this Court, the Appeal has not been justifiably decided and therefore the same deserves to be remitted back to the Appellate Authority for passing of a reasoned and speaking order dealing with the grounds raised in the Appeal challenging the order passed by the Assessing Authority on 20.8.2018.

8. In **East Coast Railway and Another** Vs. **Mahadev Appa Rao and Others** with **K. Surekha** Vs. **Mahadeo Appa Rao and Others** [**2010 (7) SCC 678**], the Hon'ble 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.

9. Accordingly and in view of above, the impugned Order dated 6.9.2019 (Annexure P-1) is set aside/quashed and the matter stands remitted back to Respondent No.3-Appellate Authority for deciding the Appeal afresh specifically dealing with the grounds raised in the memo of Appeal by the Petitioner-Company, which also find place in the impugned Order.

10. Needless to mention that while deciding the Appeal afresh, the Respondent No.3 shall give an opportunity of hearing to the Petitioner again.

11. The Writ Petition stands allowed in part and is disposed of accordingly.

Sd/-
(P. Sam Koshy)
JUDGE

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