NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPT NO. 69 OF 2020

• M/s Kanpur Seva Samiti, through Proprietor Purshottam Gemnani, S/o Shri Mohiram Gemnani, aged about 53 years, R/o Shop No.Bo4, Zone 2, Vyapar Vihar, District Bilaspur (CG) **... Petitioner**

versus

1. State of Chhattisgarh, through Principal Secretary, Department of Commercial Tax-GST, Commercial Tax-GST, North Block, Sector-19, Atal Nagar, Raipur (CG)
2. Joint Commissioner (Appeal), Commercial Tax-GST, Bilaspur (CG)
3. Assistant Commissioner, Commercial Tax-GST, Bilaspur Circle 2, District Bilaspur (CG) **… Respondents**

For Petitioner	:	Mr. Anumeh Shrivastava, Advocate.
For Respondents	:	Mr. Siddharth Dubey, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy

C A V Order

Reserved on : 06.08.2020

Pronounced on : 28.01.2021

1. Challenge in the present Writ Petition is to the two orders dated 28.11.2019 (Annexure P-1) and dated 30.11.2018 (Annexure P-2).

2. Vide order dated 30.11.2018, the Assessing Officer has passed an assessment order under Section 64(1) of the Chhattisgarh Goods and Services Tax Act 2017 (in short, "CGGST Act") assessing an additional liability of CGST Rs.13,42,963/- and SGST Rs.16,06,243/- totalling Rs.29,49,206/- upon the Petitioner and ordered for raising the additional demand.

3. Being aggrieved by the said order, the Petitioner preferred an Appeal before the Joint Commissioner/Appellate Authority under Section 107 of the CGGST Act. The said Appellate Authority partly allowed the Appeal and ascertained the demand at Rs.3,52,768/-. The primary and substantial challenge to the order of the Appellate Authority is that the Authority has not considered the whole calculation which the Petitioner had raised in their Appeal.

4. According to learned Counsel for Petitioner, along with the Appeal the Petitioner had adduced certain additional evidence as explanation to the queries put forth by the Assessing Officer. Petitioner also tried to point out certain discrepancies in the dates so far as conducting the raids, submission of inspection report, issuance of Form 28 etc., etc.

5. Having heard the contentions put forth on behalf of either side, when we look into the reasons assigned by the Appellate Authority, we find that the Appellate Authority has considered all the contentions that the Petitioner had raised in their Appeal. Moreover, it is also reflected that the Appellate Authority had in fact accepted most of the contentions that the Petitioner had raised in their Appeal and had allowed most of the claims and defence that the Petitioner had raised. The Appellate Authority had only disallowed those contentions where there were no defence, or the defence put forth were found to be totally unacceptable and were of very weak in nature. Given the reasons as is reflected in the Appellate Authority's order, it would also reveal that the same is based on facts available on record.

6. If we peruse the impugned order, we find that the Appellate Authority has in fact dealt with all the grounds raised in the Appeal and has decided the Appeal issue wise. Appellate Authority has considered the inspection report prepared on physical verification of the record and goods available at the Petitioner's establishment and the explanation which the Petitioner tried to provide to the findings made during the raid conducted.

7. While exercising the writ powers it is settled position of law that this Court would not substitute into another Appellate Authority or the second appellate forum. Under the writ jurisdiction all that this Court has to see is as to whether the authority whose order is under challenge has exceeded his power or jurisdiction. Further, what can also be tested is as to whether there is perversity on the part of the authority while passing the impugned order. Finding of facts and findings based on materials available on record, similarly findings given with reasons cannot be subjected to judicial review exercising the extraordinary writ powers under Article 226/227 of the Constitution of India. In view of the same, this Court does not find any strong case made out by the Petitioner calling for interference to the impugned orders.

8. Writ Petition therefore deserves to be and is accordingly dismissed being devoid of merits.

Sd/-

(P. Sam Koshy)
JUDGE

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