

Allahabad High Court

M/S Jalsa Resorts Thru. Director ... vs State Of U.P. Tax Deptt. Thru. ... on 1 May, 2023

Bench: Dinesh Kumar Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 8

Case :- WRIT TAX No. - 206 of 2022

Petitioner :- M/S Jalsa Resorts Thru. Director Rajendra Singh And Another

Respondent :- State Of U.P. Tax Deptt. Thru. Prin. Secy. Govt. U.P. Civil Sectt. Lko. An

Counsel for Petitioner :- Vaibhav Krishna, Mohit Pandey, Ratnesh Chandra

Counsel for Respondent :- C.S.C.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Shri Vaibhav Krishna, learned counsel for the petitioners as well as Shri Sanjay Shareen, learned counsel for the State and go through the record.
2. The present petition has been filed impugning the order dated 20.10.2022 passed by Assistant Commissioner, Grade-2 (Appeal), Judicial Division-III, Lucknow in ZD091121007477M/ZD0910220669953.
3. The said appeal was filed by the petitioner namely, M/S Jalsa Resorts(India) Private Limited situated near Khurdahi Bazar, Sultanpur Road, Lucknow under Section 107 of the Uttar Pradesh Goods and Services Tax Act, 2017 against the order dated 11.11.2021 passed by the Assistant Commissioner, Commercial Tax, Sector-12, Lucknow whereby, tax penalty and interest on amount of Rs.48,90,000/- was imposed on the petitioner.
4. The petitioner's premises were inspected by the Special Investigation Branch on 06.12.2017. The said resort is also used for organizing marriages and other functions. On the basis of the report submitted by the Special Investigation Branch, the notice under Section 74 of the Uttar Pradesh Goods and Services Tax Act, 2017 was issued to the petitioner demanding Rs.48,96,000/- amount of tax penalty and interest. The petitioner did not replied to the show cause notice. The petitioner also

did not produce the relevant documents for assessing the correct tax from July, 2017 to March, 2018.

5. In view thereof, the Assessing Authority by the ex-parte order dated 11.11.2021 considering the turnover as one crore assessed Central G.S.T. amount of Rs. 9,00,000/-, State G.S.T. amount of Rs. 9,00,000/-, penalty amount of Rs. 18,00,000/- and interest amount of Rs. 12,96,000/- and thus, total amount of Rs.48,96,000/- was assessed.

6. The petitioner, being aggrieved by the said ex-parte assessment order, filed the appeal before the opposite party No.2-Additional Commissioner, Grade-2, (Appeal)-III, State Tax, Lucknow.

7. The resort is situated at around 1,80,000 square feet. There are two long lawns, one hall and twenty eight rooms constructed in around twelve thousand square feet in four storey building. There are two cottages of seven room each. There are four employees working and as per the need, five to ten employees are also employed on temporary basis. At the time of booking, some advance is taken from the party and remaining amount is taken by resort few days before the function. Sometimes, if the parties cancel their functions, then booking is also cancelled. However, the said amount is not returned to the party but if the same party organizes any other function, then the advance amount is adjusted.

8. It was said when the search was made by the Special Investigation Branch on 06.12.2017, the petitioner was not well and he was admitted in a hospital and all the relevant documents were with the accountant and therefore, the relevant documents could not produced before the Special Investigation Branch, who conducted the raid on 06.12.2017. It is relevant to mention here that if the petitioner was not in a position to produce the relevant documents at the time of the raid by the Special Investigation Branch, nothing prevented him to produce all the relevant documents before the Assessing Authority in pursuance to the show cause notice issued to him. The petitioner never submitted the relevant documents before the Assessing Authority and the assessment order was an ex-parte order.

9. The Appellate Authority examined the record, which was submitted by the petitioner. The petitioner had filed the return for the financial year 2017-18 for the month of July, 2017 to March, 2018. In this return, it has been said that the petitioner had received Rs.43,75,059.46/- taxable amount and on which the Central G.S.T. and State G.S.T. of Rs.3,70,229/- each was paid. It was said that there was no basis for taking the turnover of the petitioner to be of Rs.1,00,00,000/- on which the Central G.S.T. and State G.S.T. 9,00,000/- each was fixed along with the interest and the penalty and the total amount assessed to be Rs.48,96,000/-.

10. The appellate authority considered the documents, which were recovered by the Special Investigation Branch including some diary and fifty six loose papers. The entries made in the diary, which was recovered from the resort would disclose the following figures:-

MONTH BOOKING AMOUNT ADVANCE BALANCE JULY 16,78,101.00 AUGUST 6,20,000.00
SEPTEMBER 16,05,000.00 OCTOBER 1,28,000.00 1,00,000.00 28,000.00 NOVEMBER

40,68,000.00 16,95,000.00 18,88,000.00 TOTAL 80,99,101.00 17,95,000.00 19,16,000.00 Loose papers were in respect of duty chart of the employees. There was no detail of inward supply and outward supply in the loose paper and, therefore, the appellate authority was of the view that because of these loose papers, no solid conclusion can be drawn. The petitioner had accepted before the appellate authority that in the financial year concerned, he had received the taxable amount Rs. 43,75,059.46/- on which, he had paid Rs. 3,70,229/- each for State G.S.T. and Central G.S.T. From the entries, as found in the diary recovered by the Special Investigation Branch, it was noticed that the petitioner had received much more advance than it was shown in the returns. From the documents recovered from the resort by the Special Investigation Branch, it was noticed that the petitioner had received Rs.17,95,000/-, whereas in the return he has shown advance of Rs. 3,73,983.05/- only.

11. Considering these facts, the appellate authority had assessed the tax amount of Rs. 1,80,000/- each for State G.S.T. and Central G.S.T., penalty amount of Rs. 3,60,000/- and interest amount of Rs. 3,19,320/- total amount of Rs. 10,39,320/- liability against the petitioner. Against the assessed amount of Rs.48,96,000/-, the Appellate Authority has reduced amount of Rs 38,56,680/-. I do not find any substance in the submission of the learned counsel for the petitioner that the assessment order is based on presumption. The appellate authority has examined each and every document submitted by the petitioner as well as the documents recovered by the Special Investigation Branch.

12. In view thereof, I find no error in the impugned order and this writ petition without being merit and substance is hereby rejected.

Order Date :- 1.5.2023 Raj