

Allahabad High Court

M/S Shree Mahaveer Export vs Union Of India And 2 Others on 2 August, 2023

Bench: Pritinker Diwaker, Chief Justice, Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2023:AHC:155291-DB

Chief Justice's Court

Case :- WRIT TAX No. - 930 of 2023

Petitioner :- M/S Shree Mahaveer Export

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Sahibe Alam

Counsel for Respondent :- A.S.G.I.,C.S.C.,Krishna Ji Shukla

Hon'ble Pritinker Diwaker,Chief Justice

Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Ritaj Kacker, learned counsel for the petitioner and Shri Ankur Agarwal, learned counsel for respondent Nos. 2 & 3. Learned Central Government Counsel has put in appearance for Union of India.

2. The writ petitioner, which is a proprietorship firm engaged in the business of export of cricket bats, has approached this Court assailing the show cause notice dated 19.7.2023 issued under Section 74 of the U.P.G.S.T. Act, 2017 (hereinafter referred to as the "Act, 2017") issued by the Assistant Commissioner of State Tax, Meerut Sector-1, Meerut, Uttar Pradesh and consequential proceedings arising from it. A relief of quashing the FORM GST-DRC-01 dated 19.7.2023 against Reference No. ZD0907230983407 and GST ASMT-10 dated 17.5.2023 issued against reference No. ZD0905230739705 has also been prayed for.

3. The challenge to the show cause notice issued under Section 74 of the Act, 2017 has been laid primarily on the ground that it fails to disclose that any tax has not been paid or short paid or

erroneously refunded or input tax credit has been wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts have been made to evade tax. It is contended that it was incumbent upon the department to put on record and demonstrate either fraud or any wilful misstatement or suppression of facts to evade tax at the instance of the petitioner-assessee.

4. It is further contended that the show cause notice fails to justify the special circumstances as enumerated in Section 74 of the Act, 2017 towards determining tax liability of the petitioner. The show cause notice is absolutely vague and has been mechanically issued. It is, thus, prayed that the show cause notice and the consequent proceeding be interfered with.

5. Shri Ankur Agarwal, learned counsel representing the respondent Nos. 2 and 3, in opposition to the writ petition, submits that the show cause notice issued against the petitioner is just, proper and does not require any interference by this Court in a writ petition under Article 226 of the Constitution of India. The petitioner may file his objections to the show cause notice which shall be duly considered by the authorities. In the show cause notice, it has been clearly indicated that the petitioner has received input tax credit from bogus firms and as such, the petitioner has been called upon to submit its reply to the show cause along with evidence. It is also contended that in fact the writ petition is premature and is not maintainable against a show cause notice. Reliance has been placed on the decision of the Apex Court dated 16.1.2023 passed in Civil Appeal No. 359 of 2023 (The State of Punjab versus M/s Shiv Enterprises and others) wherein the Court allowed the civil appeal of the State of Punjab by observing that it was premature on the part of the High Court to quash a show cause notice issued under Section 130 of the Central Goods and Services Tax Act by invoking Article 226 jurisdiction. It was also observed by the Apex Court that it was premature for the High Court to opine anything or whether there was any evasion of the tax or not. The same was to be considered in an appropriate proceedings for which the notice under Section 130 of the Central Goods and Services Tax Act was issued. Accordingly, it opined that the High Court materially erred in entertaining the writ petition against the show cause notice and quashing and setting aside the same.

6. Borrowing the analogy from the aforesaid decision, Shri Ankur Agarwal submits that the writ petition is primarily directed against the show cause notice issued against Section 74 of the Act, 2017 and the writ petition would not be maintainable.

7. We find force in the submissions of Shri Ankur Agarwal, learned counsel representing the respondent Nos. 2 and 3. The challenge in this writ petition is merely to the show cause notice issued under Section 74 of the Act, 2017 whereby the petitioner has been called upon to submit its explanation/reply/objections to the show cause notice. It is not within our domain to opine anything whether there has been any evasion of the tax or not, which has to be assessed by the department in appropriate proceedings for which the petitioner has been called upon to show cause.

8. In view of above, we are not inclined to entertain the writ petition. The writ petition fails and is accordingly, dismissed.

9. We, however, leave it open for the petitioner to file its reply to the show cause notice within a period of two weeks from today and on receipt of such objections, the Appropriate Authority shall pass appropriate orders considering the objections, strictly in accordance with law.

Order Date :- 2.8.2023

Ravi Prakash

(Ashutosh Srivastava, J.)

(Pritinker Diwaker, C.J.)