

Court No. - 39

Case :- WRIT TAX No. - 158 of 2024

Petitioner :- Ravi Kumar Jain

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Rahul Agarwal

Counsel for Respondent :- A.S.G.I.,Dhananjay Awasthi

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Manjive Shukla,J.

1. Heard Sri Rahul Agarwal learned counsel for the petitioner, Sri Dhananjay Awasthi learned counsel for the CGST Authorities and Sri Krishnaji Shukla learned counsel for the Union respondents.

2. Primarily, it has been submitted by learned counsel for the petitioner that the petitioner was not a noticee in the adjudication proceedings that have been determined by order dated 27.12.2023 being order in Original No. 07/ADC/CGST/Agra/2023-24. It is his further submission that in any case, power to grant permission for prosecution is independent of the adjudication proceedings. It falls outside the scope of quasi judicial proceedings of adjudication. That application of mind has to be made and satisfaction recorded by the Commissioner himself, independently.

3. In view of the above, it has been submitted that the observations made in the adjudication order noted above holding the petitioner guilty amount to pre-judging the issue. In any case, petitioner was never heard before such adverse observations came to be recorded.

4. Thus, it has been further submitted, if such findings/orders are allowed to stand against the petitioner, it may not only amount to grant of permission to prosecute the petitioner but that the criminal court where the criminal complaint may eventually arise may also

not reach its own conclusions independent of the findings recorded by the adjudicating authority.

5. On the other hand, learned counsel for revenue states, at present no prosecution has been lodged or initiated against the petitioner.

6. Having heard learned counsel for parties and having perused the record, we find no useful purpose may be served in keeping this petition pending or calling for counter affidavit at this stage.

7. This much is clear that the administrative satisfaction contemplated under Section 134 of the CGST Act, 2017 is to be recorded by the Commissioner. It is not to be dictated by any findings recorded in adjudication proceedings.

8. At the same time, the Additional Commissioner who has passed the adjudication order is not the Commissioner. It is also true that the petitioner was not party to the adjudication proceedings and was not heard before adverse observation came to be recorded in the impugned order.

9. In view of the above, prosecution if any may arise only on independent application of mind by the Commissioner to the entirety of the facts and circumstances of the case, without being prejudiced to any extent by the ex parte observations made in the impugned order.

10. With the above observations, writ petition is **disposed of**.

Order Date :- 15.2.2024

Faraz

(Manjive Shukla, J.) (S. D. Singh, J.)