

Court No. - 38

Case :- WRIT TAX No. - 655 of 2020

Petitioner :- Ranchi Carrying Corporation

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Aditya Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

The instructions are taken on record.

The present petition has been filed for the following reliefs:-

"I. Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned order dated 05.08.2020 passed by the respondent no.2 in Appeal No. KNP3/GST/055/2020 Assessment Year 2019-20 under the provisions of section 130 of U.P. Goods and Services Tax Act in relation to the goods.

II. Issue a suitable writ, order or direction in the nature of certiorari quashing the order dated 23.01.2020 Form GST MOV-09 related to goods.

III. Issue a suitable writ, order or direction in the nature of certiorari quashing the entire proceedings initiated by the respondent authorities in relation to goods under section 129 and 130 against the petitioner as the same has been initiated in contravention of the provisions of the integrated Goods and Services Tax Act/Rules and in contravention of the circulars issued by the Central Government which are binding on the respondents."

The counsel for the petitioner argues that none of the notices as are required to be served under Section 129 of the GST Act have been served upon the petitioner, as such the proceedings initiated and concluded against the petitioner are ex-parte proceeding.

On the basis of the said averments, this Court vide order dated 26.11.2020 had granted the Standing Counsel time to obtain instructions with regard to the averments on account of non-service of the notices and no opportunity of hearing.

The Standing Counsel Sri Jagdish Mishra, on the basis of instructions, states that the order dated 6.1.2020 was got served on the driver of the truck in question and secondly the order MOV-06 and MOV-07 was also served on the driver of the truck and with regard to the order dated 23.1.2020, MOV-09, the same was neither served on the driver nor on the owner and was served through a fixation on the truck in question.

Counsel for the petitioner argues that Section 169 of the GST Act provides for the manner of service of notice in certain circumstances, the same is quoted hereinbelow:-

"(1)Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1)."

He thus submits that the service on the driver or a fixation of the copy of the order on the truck in question is none of the methods prescribed under Section 169 GST Act and thus it is clear that the orders were never served and the proceedings were held ex-parte.

A perusal of the provisions of Section 169 makes it clear that a manner is specifically provided for service of notices. It is well settled that whenever a manner is prescribed, the thing should be done in that manner alone.

In respect of the order passed by the Appellate Authority dated 5.8.2020, the counsel for the petitioner submits that at the time of the filing of the appeal, the petitioner had submitted the requisite documents justifying his stand, however, the Appellate Authority held that as no reply was filed to the notices sent, the grounds taken in the appeal appear to be afterthought and thus the appeal was also dismissed.

A perusal of the impugned order shows that at no point of time, was the petitioner granted an opportunity of submitting his reply and the grounds taken by the petitioner before the Appellate Authority were not considered recording them to be an afterthought. Thus, on a plain reading, a failure of natural justice has been occasioned to the petitioner.

Accordingly, the order dated 5.8.2020 and the order dated 23.1.2020 are set aside with a liberty to the respondents to conclude proceedings against the petitioner, in accordance with law.

As the notices have now been served upon the petitioner, the petitioner shall file a fresh reply to the same within a period of

three weeks and the respondents shall pass fresh orders, as expeditiously as possible, preferably within a period of four weeks from the date of filing of the objections, in accordance with law.

The petition is disposed off.

Order Date :- 7.12.2020

S. Rahman