

Court No. - 5

Case :- WRIT TAX No. - 1056 of 2023

Petitioner :- M/S Baghel Trading Co

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

Counsel for Petitioner :- Yashonidhi Shukla, Vedika Nath

Counsel for Respondent :- C.S.C.

Hon'ble Piyush Agrawal, J.

Heard Ms. Vedika Nath, learned counsel for the petitioner and learned ACSC for State - respondents.

The instant Writ Tax is being entertained by this Court in view of the fact that G.S.T. Tribunal is not functional in the State of Uttar Pradesh pursuant to the Gazette notification of the Central Government bearing number CG-DL-E-14092023-248743 dated 14.09.2023.

The instant writ petition has been filed challenging the orders dated 19.8.2023 and 23.10.2021.

Learned counsel for the petitioner submits that the impugned order was neither communicated, nor served upon the petitioner. She further submits that the respondent no. 2 has failed to appreciate the word "communicated" used in section 107 of the GST Act in contrast to the word "served" used in section 169 of the GST Act. Therefore, the order dated 23.10.2021 may have been served by making it available on the portal as provided under section 169 of the GST Act, but the same will not amount to communication of the order as the order can be said to be communicated only when the person concerned comes to know about the same. He further submits that sub-section (1) of section 169 of the GST Act provides the mode of services, i.e., by registered post or speed post, communication on e-mail, making available on the common portal, by publication in newspaper or by affixation. However, as per sub-section (2) of section 169 of the GST Act, the order is deemed to be served only in case the service is effected by tendering or published or a copy thereof is affixed in the manner as provided in sub-section (1). She further submits that the Statute nowhere provides that the order made available on the common portal is deemed to be served and clauses (c) & (d) of sub-section (1) of section 169 of the GST Act are not covered by sub-section (2) of section 169 of the GST Act. Therefore, the appeal preferred by the petitioner was within limitation but the

respondent authority has arbitrarily dismissed the appeal as time barred.

She further submits that identical issue is engaging the attention of this Court in Writ Tax No. 948 of 2023 and the present writ petition may be taken up along with the same.

Matter requires consideration.

Learned counsel for the respondents may file counter affidavit within a period of four weeks from today.

In the counter affidavit, the State shall specifically averred as to how and under what manner, the deeming service as per clauses (c) & (d) of sub-section (1) of section 169 can be said to be deemed service as per sub-section (2) of section 169 of the GST Act.

List thereafter along with Writ Tax No. 948/2023.

In the meantime, no coercive action shall be taken against the petitioner pursuant to the impugned order, provided the petitioner deposits 50% of the disputed tax amount in accordance with law within a period of two weeks from today.

Any amount already deposited by the petitioner shall be adjusted against the deposit to be made under this order.

Order Date :- 3.10.2023

Rahul Dwivedi/-