

Court No. - 1

Case :- WRIT TAX No. - 557 of 2024

Petitioner :- M/S Sapphire International

Respondent :- Additional Commissioner Grade 2 And Another

Counsel for Petitioner :- Suyash Agarwal

Counsel for Respondent :- C.S.C.

Hon'ble Shekhar B. Saraf,J.

1. Heard Sri Suyash Agarwal, learned counsel appearing on behalf of petitioner and Sri Rishi Kumar Pandey, learned Additional Chief Standing Counsel appearing for the respondents.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by an ex party order passed by the appellate authority dated December 7, 2023.

3. The grounds of challenge are that the quantification of liability under the Uttar Pradesh Goods and Service Tax Act, 2017 (hereinafter referred to as "the Act") has been done under Section 130 of the Act, which is not permissible in law. Counsel appearing on behalf of the petitioner relies on a judgement of this Court in **Maa Mahamaya Alloys Pvt. Ltd. v. State of U.P.** reported in **(2023) 6 Centax 62 (All.)**, wherein Hon'ble Pankaj Bhatia, J. had penned the following:-

"11. The issue raised herein in Issue no.1 is marked resemblance to facts referred in the judgment of this Court in the case M/s Metenere Limited (supra) wherein on the basis of a similar search conducted, the demand was quantified. This Court after analysing the provisions of the Act and the Rules applicable held that for the infractions as contained in Section 122 of the GST Act and specified in Column "A" of paragraph 35 of the said judgment M/s Metenere Limited (Supra) held that penalty has to be Rs.10,000/- or the amount of tax evaded whichever is higher, whereas for the infractions specified in Column "B" of paragraph 35, the penalty

that can be imposed is Rs.10,000/- only. This Court also held that the demand for tax can be quantified and raised only in the manner prescribed in Section 73 or Section 74 of the Act, as the case may be.

12. In the light of what has been decided by this Court in the case of M/s Metenere Limited (Supra), it is clear that the entire exercise resorted to under Section 130 of the GST Act for assessment/ determination of the tax and the penalty is neither stipulated under the Act, nor can be done in the manner in which it has been done, more so, in view of the fact that the department itself had undertaken the exercise of quantifying the tax due, by taking recourse under Section 74.

13. As the entire tax has been determined and the penalty has been levied only on the basis of a survey by taking recourse under Section 130 of the GST Act and not taking a recourse to Section 74, the order impugned is clearly unsustainable.

14.....

15. On a plain reading of the allegations levelled against the petitioner with regard to the improper accounting of goods, the only stipulation contained in Clauses (ii) and (iv) of sub-section (1) of Section 130 can at best be invoked by the department, however, in the present case, even assuming for the sake of argument, that the goods were lying in excess of the goods in record, the case against the petitioner would not fall under Clause (ii) of sub-section (1) of Section 130 for the simple reason that the liability to pay the tax arises at the time of point of supply, and not at any point earlier than that. On a plain reading, the scope of Clause (ii) of sub-section (1) of Section 130 is that any assessee who is liable to pay tax and does not account for such goods, after the time of supply is occasioned, would be liable to penalty under Clause (ii). Analyzing Clause (iv) of sub-section (1) of Section 130, the contravention of any provision of the Act or the Rules should be in conjunction with an intent to evade payment tax and penalty can be levied by invoking Clause (iv) only when the department establishes that there were a contravention of the Act and Rules coupled with the "intent to make payment of tax'. There is no such allegation in the show cause notice or any of the orders, I have no hesitation in holding that even the Clause (iv) of sub-section (1) of Section 130 would not be attracted in the present case."

4. Upon a perusal of the above judgement, it is clear that the quantification of tax liability cannot be done under Section 130 of the Act rather the authorities should take recourse to Section 74 of the Act. Furthermore, it appears from the record that the order impugned was passed *ex parte*. However, it appears that several opportunities were given to the petitioner, but the petitioner did not appear before the authorities. Counsel appearing on behalf of the petitioner submits that there were compelling grounds for non-appearance of the petitioner before the appellate authority.

5. In light of the above submission and contentions, I am of the view that in the present case impugned order is required to be set aside. Accordingly, impugned order dated December 7, 2023 is quashed and set aside, with a direction upon the authority below to grant opportunity of hearing to the petitioner and thereafter pass a reasoned order.

6. With the above direction, the writ petition is disposed of.

Order Date :- 23.4.2024

Dev/-

(Shekhar B. Saraf,J.)