

A.F.R.

Court No. - 2

Case :- WRIT TAX No. - 264 of 2024

Petitioner :- M/S A.V. Pharma Thru. Its Prop. Smt. Madhu Vohra

Respondent :- State Of U.P. Thru. Prin. Secy. State Tax Lko. And 2 Others

Counsel for Petitioner :- Anuj Kudesia, Anurag Tyagi

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Manish Kumar, J.

1. Supplementary affidavit on behalf of petitioner and short counter affidavit on behalf of State filed today are taken on record.

2. Heard Shri Anuj Kudesia, learned counsel for the petitioner and learned Additional Chief Standing Counsel for the State as also Shri Akhilesh Kumar, Deputy Commissioner, State G.S.T., Lucknow, who is present before this Court.

3. The present writ petition has been filed with the following reliefs:-

"i) to issue a writ, order or direction in the nature of Certiorari quashing the order on Form GST DRC-13 dated 05.10.2024 issued by Deputy Commissioner, State Tax, Sector 05, Lucknow contained as annexure no. 1 to this writ petition.

ii) to issue a writ, order or direction in the nature of certiorari quashing the assessment order and DRC-07 dated 02.12.2023 issued by Deputy Commissioner, State Tax, Sector-5, Lucknow contained as annexure no. 2 to this writ petition.

iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to direct the petitioner bank to de-freeze the two bank accounts operated petitioners i.e. account No. 7711564951 and Account No. 9946014812 in Kotak Mahindra Bank. "

4. The contention of learned counsel for the petitioner is that the impugned orders are barred by sub Section 10 of Section 73 of the U.P.G.S.T. Act, 2017 (hereinafter referred to as, the Act, 2017) as they have been passed beyond the time limit prescribed therein as calculated from the due date of filing annual returns prescribed in Section 44 (1), which was extended

to 05.02.2020 and the time limit of three years ended on 05.02.2023 but the impugned orders are dated 05.10.2024 and 02.12.2023, therefore, the impugned orders are without jurisdiction.

5. After hearing the parties, what comes out is that for justifying the time limit within which the impugned orders have been passed under Section 73 (9) and (10) of the Act, 2017 for the financial year 2017-18 reliance is being placed upon a notification dated 24.04.2023 by which the time limit of three years mentioned in sub Section 10 of Section 73 was extended for the financial year 2017-18 upto 31.12.2023, however, what is being omitted from consideration by the opposite party is that this notification dated 24.04.2023 has been given retrospective effect only from 31.03.2023 and not prior to it, now, in this context we may refer to Section 73 (10) of the Act, 2017, which reads as under:-

"(10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund."

6. We may also refer to Section 44(1) of the Act, 2017, which reads as under:-

"44. Annual return -(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of Central tax shall be deemed to be notified by the Commissioner."

7. Ordinarily the due date for filing annual return is 31st December of the end of the Financial Year, which in the case of financial year 2017-18 would be 31.12.2018, however, this due date for filing annual return, as already observed earlier, was

extended vide notification of the Central Board of Direct Taxes and Customs dated, 03.02.2018 to 05.02.2020 and this notification was adopted by the State of U.P. vide notification dated 05.02.2020. Based on this notification, the period of three years mentioned in sub Section 10 of Section 73 would end on 05.02.2023 meaning thereby, an order under sub Section 9 of Section 73 for the financial year 2017-18 could have been passed by 05.02.2023 but not after it. Now the opposite parties are relying on the notification dated 24.04.2023 to submit that in fact they could have passed the order under sub Section 9 of Section 73 uptill 31.12.2023 however in doing so, they omit to consider para no. 2 of the said notification which says that the notification dated 24.04.2023 would be applicable retrospectively but only from 31.03.2023 meaning thereby, if the time limit of three years prescribed in sub Section 10 of Section 73 read with sub Section 1 of Section 44 expired prior to 31.03.2023 then the notification dated 24.04.2023 extending the time limit for passing of an order under sub Section 9 of Section 73 would not be applicable, apparently so.

8. Apparently the impugned orders are beyond the time limit prescribed under sub Section 10 of Section 73 as applicable for the financial year 2017-18 and therefore the impugned orders are beyond jurisdiction being barred by the time provided in the said provision, therefore, we **allow** the writ petition and quash the impugned orders dated 05.10.2024 and 02.12.2023 issued by the Deputy Commissioner, State Tax, Sector 05, Lucknow.

9. Consequences shall follow, accordingly. The accounts of the petitioner which have been freezed shall be de-freezed.

Order Date :- 12.11.2024

Ashish