Court No. - 10

Case :- WRIT TAX No. - 1027 of 2022

Petitioner :- M/S Yash Kothari Public Charitable Trust
Respondent :- State Of U.P. And 2 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.

Hon'ble Rohit Ranjan Agarwal,J.

1. Heard Sri Nishant Mishra, learned counsel for the petitioner and Sri A.C. Tripathi, learned Standing Counsel for the State.

2. This writ petition has been filed claiming relief for quashing the correspondence dated 30.06.2022 issued by the respondent no. 2 requiring the petitioner assessee to furnish acknowledgement of online filing of the appeal.

3. The case, in nutshell, is that the assessee, which is a registered public charitable trust and duly registered under the Societies Registration Act and also under Section 12-AA of the Income Tax Act, is constructing a charitable hospital and certain exemption was claimed by the assessee which was not granted by the assessment order passed on 12.01.2022 being order No. ZD090122015905M. After passing of the said order, the assessee reversed certain input tax credit through Form GSTR-3B, which was filed on 08.02.2022. The department on 12.01.2022 passed a summary order under Rule 142 (5) of UP GST Rules, 2017. The assessee in the meantime had tried to file appeal online against the original order which was not accepted and the web-portal displayed error.

4. The assessee also preferred an appeal online against the summary order being order No. ZD090122015958B. The portal of the department reflected that the order number entered is already under appeal or appeal order has been passed. If error persists, please call GST help desk or log your issues on

Grievance Redressal Portal for GST and quote error number. The assessee, thereafter, moved a letter before the authority making a complaint that the portal was not accepting the appeal against the order passed by the department. A rectification order under Section 161 was passed by the authorities on 19.04.2022, pursuant to which the recovery proceeding was initiated against the assessee on 21.04.2022. The Additional Commissioner, Grade-II (Appeals)-1, Commercial Tax, Kanpur on 28.04.2022 had required the assessee to submit the acknowledgement of appeal filed online. Hence, this petition.

5. Sri Nishant Mishra, learned counsel for the petitioner, submitted that the online portal of the department is not accepting the appeal filed by the assessee against the original order and the department is insisting for placing the acknowledgement of the appeal filed online and is not accepting the appeal filed offline. He further contends that Section 107 of CGST Act, 2008 provides for the filing of the appeal against the order passed under the Act. According to him, Rule 108 provides for the procedure and appeal to the Appellate Authority is to be filed in Form GST APL-01 alongwith relevant documents either electronically or otherwise as may be notified by the Commissioner. According to learned counsel, till date the Commissioner has not notified the other method through which an appeal could be filed.

6. He invited the attention of the Court to the definition clause 2 (80) wherein the word "notification" has been defined which means a notification published in official gazette and the expressions "notify" and "notified" shall be construed accordingly. According to assessee's counsel, once the Commissioner has not made any notification or the State Government has issued any notification notifying the other mode of filing of an appeal, then the filing of appeal offline by

the assessee cannot be denied by the department.

7. He next contended that in the counter affidavit there is no denial to paragraph no. 32 of the petition wherein assessee has taken a stand that till date no such notification has been issued by the Commissioner notifying the same in the official gazette. Reliance has been placed upon a Division Bench judgment o**f Andhra Pradesh High Court in case of Ali Cotton Mill Vs. Appellate Joint Commissioner (ST), 2022 (56) G.S.T.L. 270 (A.P.)**, wherein the Court held as under;

"10. As can be seen from Rule 108(1) of AP GST Rules, 2017, the language employed therein is as clear as crystal to the effect that an appeal to the appellate authority under Section 107(1) of the AP GST Act shall be filed along with form GST APL-01 and the relevant documents 'either electronically or otherwise as may be notified by the Chief Commissioner'. So, till the Chief Commissioner specifies one particular mode of filing, the concerned appellant can choose to file the appeal either electronically or otherwise i.e., manually. In that view, the interpretation of the 1st respondent that since the Chief Commissioner has not given notification that the manual filing of the appeal can be accepted by the appellate authority, the appellant cannot file the appeal in manual form is contrary to the purport of Rule 108(1) of AP GST Rules, 2017.

11. In similar circumstances, Division Bench of this Court in W.P.No.9324 of 2019, dated 01.08.2019, held thus:

"Having regard to the facts and submissions and as the case of the petitioner requires adjudication on merits and when substantial justice is pitted against technical considerations, it is always necessary to prefer the ends of justice, we are of the considered view that the request of the petitioner merits consideration. Such course also would help the petitioner in having his cause decided on merits."

8. *Per contra*, Sri A.C. Tripathi, learned Standing Counsel, submitted that the order which the assessee wants to challenge before the Appellate Authority in shape of original order No. ZD090122015905M only records the finding as to the demand and penalty and the summary order which has been passed under Rule 142 (5) of UP GST Rules should be challenged in appeal before the authority. According to him, the reference number of the said order is ZD090122015958B. The appeal against the said order has already been preferred by the assessee but he is not placing the acknowledgement slip before the

authorities for its due consideration.

9. Learned Standing Counsel further contended that the word "notified" used in Rule 108 does not mean any notification which is to be issued by the Commissioner but it is a circular which Commissioner has issued in respect of filing of an appeal. He further invited the attention of the Court to the letter addressed by the Joint Commissioner (Legal), Commercial Tax to the Additional Commissioner, Grade-I dated 31.08.2022 wherein the officer concerned has tried to convince the senior officer that there being certain glitches in filing of appeal against the order passed under Section 161 of the Act and the assessee in those cases may prefer appeal offline.

10. According to him, in the present case, the appeal filed by the assessee against the summary order was maintainable and assessee has not placed before the Appellate Authority the acknowledgement slip due to which the appeal was not being heard and decided. He then invited the attention of the Court to the circular issued by the Commissioner, Commercial Tax, U.P. dated 11.08.2022 wherein the problem of technical glitches in filing of appeal was discussed by the Commissioner and a direction was issued to all the Appellate Authorities through out the State to get the matter resolved through the IT Cell and entertain the appeal online.

11. I have heard the respective counsel and perused the material on record.

12. The short question for consideration before this Court is that whether due to the mistake of the department or the technical glitch in software when an appeal of assessee is not reflected on the portal, whether the authorities can deny to entertain the appeal filed offline on technical grounds.

13. This is a case where the Taxing Authorities of the State are

contesting tooth and nail up till this Court preventing the assessee from consideration of his appeal offline though, *prima facie*, it is clear that the appeal filed by the assessee is not being reflected on the web-portal of the department. The department is trying to justify its stand that an appeal will lie against a summary order passed in DRC-07 under Rule 142(5) of the Rules and not against the original order, which was passed under Section 74 of the Act being order No. ZD090122015905M.

14. Section 107 of the Act of 2017, which provides for appeal against the adjudication order, clearly states that any person aggrieved by any decision or order passed under the Act or the State Goods and Services Tax Act or the Union Territory Goods and Service Tax Act by an adjudicating authority may appeal to such Appellate Authority. The legislature has not put any embargo upon filing of an appeal before the Appellate Authority by a person aggrieved, against any order.

15. The contention of learned Standing Counsel that an appeal against order passed under Rule 142(5) that is a summary order, is only maintainable cannot be accepted by this Court. The legislature has used the word "any person aggrieved by any decision or order passed under this Act". The order dated 12.01.2022 being order No. ZD090122015905M has been passed by the Adjudicating Authority and the assessee if aggrieved by that order cannot be stopped from challenging the order before the Appellate Authority. It is the Appellate Authority, who has to take final decision in the matter. The Appellate Authority is there to adjudicate the matter, which is before it under the provisions of the Act, and it cannot stop any aggrieved person from approaching the forum through filing the appeal restricting his right.

16. The Act has granted right to every person, who is aggrieved by an order passed by the Adjudicating Authority to approach the appellate forum as envisaged under Section 107. The act of the respondents in not entertaining the appeal offline is an act from stopping the assessee from getting his right adjudicated as provided under the Act.

17. Moreover, Rule 108 which is the procedure laid down for filing of an appeal clearly envisages situation where the appeal has to be filed electronically i.e. online. It further provides that appeal can also be filed otherwise as may be notified by the Commissioner. In the State of Uttar Pradesh, the Commissioner has not notified other mode of filing an appeal before the first Appellate Authority.

18. In the counter affidavit filed by the State, there is no denial to paragraph no. 32 of the writ petition wherein specific pleading has been made by the assessee that no other method has been notified by the Commissioner for filing appeal other than through electronic mode. The contention of learned Standing Counsel that Commissioner has issued a circular does not hold ground as the word 'notification' has been defined in Section 2(80) of the Act, which means a notification published in the official gazette and the expression 'notify' and 'notified' shall be construed accordingly.

19. There is absolute clarity by the legislature as to the notification which has to be published by the State Government in the official gazette. Once no such notification has been issued, it would be presumed that other mode of filing the appeal would be offline.

20. The view taken by the Division Bench of Andhra Pradesh High Court in **Ali Cotton Mill (Supra)** interpreting Rule 108 to the extent that in case of notification not issued by the Chief

Commissioner, it will be presumed that other mode is only through offline.

21. This Court finds that the taxing authorities cannot stop any assessee from claiming his statutory right, as provided under this Act in the garb of technicality.

22. In view of the said fact, the correspondence dated 30.06.2022 issued by the respondent No.2 is hereby set-aside. The Additional Commissioner, Grade-II (Appeals)-1, Commercial Tax, Kanpur, is hereby directed to consider the appeal of the assessee filed offline strictly in accordance with law within a period of one month from the date of presentation of a certified copy of this order before him.

23. Writ petition stands partly allowed.

Order Date :- 16.1.2023
Shekhar