

Court No. - 5

Case :- WRIT TAX No. - 1279 of 2024

Petitioner :- M/S Astol Cleantech Pvt Ltd

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Shubham Agrawal

Counsel for Respondent :- C.S.C.

Hon'ble J.J. Munir,J.

The petitioner is aggrieved by an assessment order dated 24.08.2022 passed by respondent no. 3 assessing GST for the months of June-July, 2018 under Section 74 of the GST Act.

The submission of learned Counsel for the petitioner is that he purchased the goods from a supplier known as M/s Kali Traders during June-July, 2018, which were dispatched to him through transport for which there are invoices, bilties and e-way bills on record giving complete particulars of the transporters and the vehicle number etc. It is also submitted that the petitioner had paid the supplier through banking channel paying for the entire worth of goods, including GST. It is also emphasized that at the time when the transaction was done, the supplier was registered with the Department of the GST and the mere fact that the supplier allegedly did not deposit the GST would not entail denial of the input tax credit, which the petitioner has been denied merely on account of the fact that the supplier did not deposit the GST, or at the later date, his registration was cancelled. It is emphasized that the provisions of Section 16(2) (c) of the U.P. G.S.T. Act, 2017 would not be attracted for reason that four places down the chain of transactions, one of the suppliers had not paid GST. It is also emphasized that the tax invoices, GSTR-2A, records of payment through Bank are sufficient to comply with the requirement of Section 16 of the said Act and entitle the petitioner to claim benefit of the input

tax credit.

So far as the absence of the Toll Plaza receipt is concerned, it is pleaded in paragraph no. 17 of the writ petition that the transaction relates to the year 2018, when every Highway did not have a Toll Plaza and alternate routes/non toll roads were available. It is also argued that the SIB search of the supplier, who was found not to exist at his address was conducted by the respondents after one year of the transaction during which period of time the possibility of a change in the affairs of the supplier cannot be ruled out.

A prima facie case is made out.

Admit.

Issue notice.

Notice on behalf of all the respondents is accepted by Mr. Arvind Mishra, learned Standing Counsel. He is granted three weeks' time to file a counter affidavit.

List for **orders** on **25.09.2024** along with a report regarding status of pleadings.

Until further orders of this Court, operation of the impugned order dated 23.02.2024 passed by the Additional Commissioner-2 (Appeal)-3, State Tax, Noida, Gautam Buddh Nagar and the order dated 24.08.2022 passed by the Deputy Commissioner, Sales Tax, Sector-I, Gautam Buddh Nagar shall remain **stayed** provided the petitioner deposits 30% of the assessed tax, after adjusting the amount of tax already deposited for the months of June-July 2018.

Let this order be communicated to the Additional Commissioner-2 (Appeal)-3, State Tax, Noida, Gautam Buddh Nagar and the Deputy Commissioner, Sales Tax, Sector-I, Gautam Buddh Nagar through the Chief Judicial Magistrate,

Gautam Buddh Nagar by the Registrar (Compliance) **within 48 hours.**

Order Date :- 4.9.2024

Deepak