

Court No. - 10

Case :- WRIT TAX No. - 1892 of 2024

Petitioner :- Surender Gupta

Respondent :- Appellate Authority State Gst / Additional Commissioner
Grade-Ii And 2 Others

Counsel for Petitioner :- Nikhil Kumar, Vagish Yadav

Counsel for Respondent :- Kaushalendra Nath Singh, Ankur
Agarwal, C.S.C., Gopal Verma

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Sri Nikhil Kumar, learned counsel for the petitioner, and Sri Ankur Agarwal for the respondent no.4, and Sri R.S. Pandey, learned Additional Chief Standing Counsel for the State-respondents.
2. By means of this writ petition, the petitioner has challenged the order dated 05.09.2024 passed by the respondent no.1 and order dated 15.12.2023 passed by respondent no.2.
3. Learned counsel for the petitioner submits that the petitioner is the head (karta) of the Hindu Undivided Family, whose family is in possession and ownership of building situated at F-16, Sector-18, Noida, Gautam Buddha Nagar. The said property is a commercial four-storey building and as such the petitioner is in the business of renting out the said property. The rent received from the said property, is taxable under the Goods & Services Tax Act, 2017 and therefore, the petitioner has filed its return. The petitioner, being a law abiding person, has paid one time lease rent amounting to Rs. 97,18,500/- to the New Okhla Development Authority (hereinafter

referred to as the 'NOIDA') and also paid the GST @ 18%, which amounts to Rs.17,49,330/-, pursuant to which, the NOIDA issued a tax invoice to the petitioner. The petitioner furnishes his return under Section 39 of the CGST/UPGST Act. He further submits due to the mistake on the part of the NOIDA, the same was not reflecting in the form GSTR-3B, however, the tax so deposited by the petitioner, was accepted by the NOIDA.

4. He further submits that the proceedings were initiated against the petitioner under Section 61 of the CGST Act to which the petitioner submitted his reply and thereafter, the proceedings under Section 73 (1) of the CGST Act was initiated to which the petitioner also submitted a detailed reply supported by documentary evidence showing the payment of tax as well as acknowledgement receipt issued by the NOIDA, but without considering the same, the impugned order has been passed against which an appeal was filed, which was also dismissed without considering the material available on record.
5. He further submits that in the counter affidavit filed on behalf of NOIDA, the fact with regard to deposit of amount of tax by the petitioner has been accepted and same has been deposited in some other head. He further submits that once the NOIDA accepts the payment of tax, the petitioner cannot be penalized twice; once paying the tax to the NOIDA for depositing the same with GST department as per the law and other by facing penal proceedings under Section 73 of the GST Act whereby tax has again been imposed upon the petitioner of equal amount along with penalty of Rs.19,22,778/-. He further submits that the amount of tax and penalty imposed by the impugned order upon the petitioner may be directed to be paid/compensated by the NOIDA to the petitioner.
6. *Per contra*, learned Standing Counsel supports the impugned order by submitting that the proceedings were rightly initiated against the

petitioner as engaged in renting out the commercial building, over which goods and services tax are liable to be paid/deposit, but the same was not deposited.

7. The counsel appearing for the NOIDA admits that the amount was received towards from the petitioner towards the GST payment, but the same was deposited under some wrong head. He further submits that had the same was notified at the proper time, the same would have been rectified. He further submits that it's the mistake on the part of the petitioner in not informing the respondent-NOIDA within time.
8. Upon hearing the parties, the Court has perused the records.
9. The record shows that the petitioner has paid the amount of GST to the NOIDA, which was required to be deposited with the GST Department. The said fact has not been disputed by either of the authorities.
10. The paragraph nos. 3, 4, 5 & 6 of the counter affidavit filed on behalf of the NOIDA would be relevant, which reads as under:-

“3. That it is pertinent to submit here that on 21.09.2017 the petitioner had deposited Rs. 97,18,500/- towards lump sum/one time lease rent amount of the plot situated at F-16, Sector 18, Noida. The Petitioner also paid Rs. 17,49,330/- towards 18% GST for the aforesaid plot with the respondent authority. Copy of the statement of accounts of the petitioner for payment of one-time lease rent alongwith payment of applicable GST and the copy of the payment challan dated 21.09.2017 are collectively filed herewith as ANNEXURE No. SA1 (colly.).

4. That pertinently since the GST Act was recently enacted and due to non-clarity and on the advise of the tax consultant of the Authority, the said tax was deposited by the Respondent Authority in the head of B2C and subsequently the return was filed. If the Petitioner had approached the Authority at that time, the Authority could have

filed the rectification application. But, this fact went unnoticed and resultantly the same could not be rectified in time.

5. That on 18.10.2017, the Respondent Noida Authority deposited the aforesaid payment of GST at 18% amounting to Rs. 17,49,330/- with the State GST Authorities and as such filed its return in Form GSTR-3B dated 18.10.2017 for the Month of September F.Y. 2017-18. Copy of the Return filed by the Noida Authority dated 18.10.2017 for the Month of September F.Y. 2017-18 is filed herewith as ANNEXURE No. SA2.

6. That the Noida Authority vide its return filed in Form GSTR 3B dated 18.10.2017 for the Month of September F.Y. 2017-18 deposited Rs. 14,10,21,036/- towards CGST and Rs. 14,10,21,036/ towards SGST. This amount included the amount of Rs. 8,74,665/- paid by the Petitioner towards CGST and Rs. 8,74,665/ towards SGST. Therefore, as such the tax collected by the Respondent Noida Authority from the Petitioner had been deposited by the Respondent Noida Authority on 18.10.2017 itself with the GST Authorities.”

- 11.** Perusal of the contents of the counter affidavit filed on behalf of NOIDA, show that the payment of GST deposited by the petitioner was accepted by it. Further, they also admitted depositing of the GST amount under the wrong head. The NOIDA had attributed its mistake upon tax consultant by whom the advise was taken. In turn, the NOIDA accepts its mistake for non-deposit of the due tax so paid by the petitioner under the proper heads.
- 12.** In view of the above categorical statement of admission made in the counter affidavit filed by the NOIDA/respondent no.4, the impugned orders cannot be said to be arbitrary or call for any interference by this Court.
- 13.** Before parting, it will be relevant to notice that the tax amount paid by the petitioner to the NOIDA authorities was accepted, and deposited under the wrong head, hence the petitioner cannot be

permitted to suffer to the mistake committed on the part of NOIDA. The petitioner paid the legitimate tax to NOIDA, which was not deposited under the proper head and therefore, on account of that the petitioner has to face not only the proceedings of GST, but also imposition of penalty.

14. In view of the peculiar facts and circumstances, the Court is of the view that the petitioner must be compensated by NOIDA.
15. The Hon'ble Apex Court in the case of *Batliboi Environmental Engineers Limited Vs. Hindustan Petroleum Corporation Limited an Another, (2024) 2 Supreme Court cases 375*, has held that computation of compensation should not be whimsical and absurd resulting in a windfall and bounty for one party at the expense of the other and the damages should be commensurate with the loss sustained by the party.
16. Since the quantification against the petitioner along with penalty has been made of Rs.19,22,778/-, which has been confirmed by the appellate authority, a Writ of Mandamus under Article 226 of the Constitution of India is issued to the respondent no.4 i.e. NOIDA to pay/compensate the amount of Rs.19,22,778/- to the petitioner within 15 days from today. After making the said payment to the petitioner, the NOIDA shall intimate about the same to the District Magistrate, Gautam Buddh Nagar within the said period.
17. The NOIDA is at liberty to recover the said amount from the erring officer of its department.
18. In the event of failure of payment of compensation to the petitioner by the NOIDA as mentioned here-in-above, the District Magistrate, Gautam Buddh Nagar is directed to recover the said amount from NOIDA and pay the same to the petitioner within 15 days thereafter.
19. Accordingly, the writ petition is *disposed off*.

20. An affidavit of compliance shall be filed by the NOIDA within a period of one month from today. In the event of failure, the District Magistrate, Gautam Buddh Nagar is directed to file an affidavit of compliance as stated above within a month.
21. List in Chamber on 15.05.2025.
22. The Registrar (Compliance) of this Court is directed to communicate this order to the NOIDA and District Magistrate-Gautam Buddh Nagar, within 24 hours from today.

Order Date :-28.03.2025

Pravesh Mishra/-

(PIYUSH AGRAWAL, J.)