HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D. B. Civil Writ Petition No. 38/2024

Aakar Constructions (Firm)

----Petitioner

Versus

Dy. Commissioner, Circle-J, Jaipur-III & Others.

----Respondents

For Petitioner	:	Mrs. Parinitoo Jain Advocate through Video Conferencing. Mr. Tanmay Sharma Advocate.
For Respondent No. 3	:	Ms. Pratyushi Mehta Advocate on behalf of Mr. Bharat Vyas Additional Advocate General.
For Respondent No. 4	:	Mr. Kinshuk Jain Advocate.

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

28/02/2024

Heard.

As learned State Counsel would submit that there are no instructions to take notice on behalf of Respondents No. 1 and 2, let notice be issued to Respondents No. 1 and 2 on payment of P.F. within one week, returnable within three weeks.

When this case was listed before this Court on 25.01.2024, this Court had taken note of the fact that the additional tax liability was result of addition of turnover, resulting in double taxation.

When the case again came up for consideration on 01.02.2024, this Court required the petitioner to assist the Court that if the assessment order has been allowed to attain finality by not filing an appeal, can the matter be argued on merits.

Learned counsel for the petitioner would submit that in extraordinary situation where without involving any disputed question of fact, the petitioner comes out with a case of double taxation on the same amount of turnover, to that limited extent, writ petition could be entertained as that would amount to violation of statutory provisions, as held by the Hon’ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada & Others Vs. Glaxo Smith Kline Consumer Health Care Limited (2020) 19 SCC 681**.

Learned counsel for Respondent No. 4 would submit that as the petitioner did not file any appeal within the statutory period of limitation, the writ petition would not be maintainable in view of the decision of the Hon’ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada & Others Vs. Glaxo Smith Kline Consumer Health Care Limited (supra)**.

On prima facie considerations, we find that tax liability in respect of return of March, 2023 was fastened on the petitioner due to inadvertent addition of turnover of April, 2023 while submitting return of March, 2023. The petitioner, thereafter, amended its return for March, 2023 excluding the turnover of April, 2023. This amendment in the return of March, 2023 was accepted by the department. It is also the case of the petitioner that in any case, turnover of April, 2023 has, in fact, been included in the return of April, 2023. It is submitted that tax has already been paid on the basis of turnover of March, 2023 as also in respect of turnover of April, 2023 and, therefore, if the impugned action is allowed to stand, it would amount to double taxation which will be in apparent violation of the provisions of GST laws.

In view of above, we are inclined to hear this matter.

Respondents No. 3 and 4 are granted four weeks time to file reply.

Till the next date of hearing, no coercive steps shall be taken against the petitioner for recovery of the balance amount.

List this matter after four weeks.

(BHUWAN GOYAL),J (MANINDRA MOHAN SHRIVASTAVA),CJ

MANOJ NARWANI /37