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Judgment No.: 023
Dt.: 30-11-2023



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Judgment Deals With

Section/Rule	Section 61 & Section 74
Authority	Allahabad High Court
Case Name	M/s. Nagarjuna Agro Chemicals Pvt.Ltd. VS State of U.P. and Another
Dated	25 th July, 2023

Brief Facts:

The petitioner has submitted returns for the year 2018-19. The department apparently has not initiated any action referable to Section 61 of the Act. It transpires that the proceedings under Section 74 have been initiated by the department against the petitioner on certain grounds with regard to classification and consequential tax payable of certain goods. The department has examined the issue and ultimately passed the order impugned whereby the tax previously paid was found short and a demand has been raised for deposit of appropriate shortfall.

Contention of Petitioner:

Since returns had been submitted, therefore, the appropriate course open for the department was to have pointed out deficiency in the returns submitted by the petitioner so as to give it an opportunity to rectify the return before proceeding under Section 74 of the Act. Section 61 regulates scrutiny of returns. In the process of scrutiny of such returns, the proper officer has been vested the jurisdiction to examine the return and in case any discrepancies are noticed therein, the proper officer can intimate such discrepancy to the assessee with the object of conferring an opportunity upon the assessee to rectify such discrepancy.

Findings & Order:

In the present case it does not appear that any discrepancy was noticed by the department in the returns of the petitioner nor any such deficiency was pointed out to the assessee for it to be rectified by it. The returns, therefore, remain intact. It is later at the stage of consideration of the return that the department has found that proper tax has not been deposited and consequently proceedings u/s 74 has been initiated and concluded against petitioner. In the statutory scheme, the course followed by the department would clearly be permissible in law. The scrutiny proceedings of return as well as proceeding under Section 74 are two separate and distinct exigencies and issuance of notice under Section 61(3), therefore, cannot be construed as a condition precedent for initiation of action under Section 74 of the Act.

Thus, merely because no notices were issued under Section 61 of the Act would mean that issues of classification or short payment of tax cannot be dealt with under Section 74 is non-acceptable as exercise of such power is not dependent upon issuance of notice under Section 61.

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