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By Nidhi, Advocate



Judgment No.: 024
Dt.: 04-12-2023



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Judgment Deals With

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| Section/Rule | Section 122 |
| Authority | Allahabad High Court |
| Case Name | Clear Secured Services Private Limited VS Commissioner, State Tax GST And Another |
| Dated | 23 rd November, 2023 |

Brief Facts:

The petitioner is providing manpower supply services. The petitioner was served with a SCN dated 27.05.2021, whereby allegations were levelled alleging that although the petitioner had collected the GST but the same was not paid within the time prescribed and thus, the petitioner was liable for payment of penalty in terms of the mandate of Section 122(1)(iii) of the GST Act. The petitioner could not give a reply on account of Covid - 19 situation prevalent and in the absence of such a reply, an order came to be passed against the petitioner which was ex-parte imposing the total amount of penalty of Rs.56,00,952.72/-. Aggrieved against the said order, the petitioner preferred an appeal. The Appellate Authority dismissed the appeal by means of an order dated 14.09.2022. While dismissing the appeal, the Appellate Authority recorded that the amount could not be deposited within the time frame as the amounts were not received within time owing to the Covid - 19 situation and in any case, the said amounts were paid alongwith late fee after the expiry of 3 months' time and thus no case for levy of penalty was made out. However, the Appellate Authority upheld the imposition on penalty and dismissed appeal by placing reliance on mandate of Section 122(1)(iii) of Act.

Contention of Petitioner:

The penalty is imposable in terms of the mandate of Section 122(1)(iii) of the Act in respect of there being delay in depositing the tax so collected beyond a period of 3 months, however, the amount of penalty imposable is specified and the same is a sum of Rs.10,000/- or an amount equivalent to the tax evaded or tax not deducted under Section 51 of the Act. Thus, in worst case scenario, the petitioner could have been burdened with a penalty of Rs.10,000/- as admittedly no amount of tax has been evaded.

Findings & Order:

There is no material on record or even an allegation against the petitioner that the amount was collected but not paid or evaded, but only allegation is that the amount was not paid within the time prescribed and was paid after a delay. Even if the said allegation for the sake of argument is treated to be correct, the only penalty imposable against the petitioner would be Rs.10,000/- as no amount of tax has admittedly been evaded by the petitioner. Thus, there being no allegation of tax evasion, the maximum penalty that could have been imposed was Rs.10,000/-. The orders impugned dated 25.08.2021 & 14.09.2022 were set aside.

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